

2008

Combating Corruption in Nigeria: A Critical Appraisal of the Laws, Institutions, and the Political Will

Osita Nnamani Ogbu

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/annlsurvey>



Part of the [Other Law Commons](#)

Recommended Citation

Ogbu, Osita Nnamani (2008) "Combating Corruption in Nigeria: A Critical Appraisal of the Laws, Institutions, and the Political Will," *Annual Survey of International & Comparative Law*: Vol. 14: Iss. 1, Article 6.
Available at: <http://digitalcommons.law.ggu.edu/annlsurvey/vol14/iss1/6>

This Article is brought to you for free and open access by the Academic Journals at GGU Law Digital Commons. It has been accepted for inclusion in *Annual Survey of International & Comparative Law* by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.

COMBATING CORRUPTION IN NIGERIA: A CRITICAL APPRAISAL OF THE LAWS, INSTITUTIONS, AND THE POLITICAL WILL

OSITA NNAMANI OGBU*

I. INTRODUCTION

Corruption is pervasive and widespread in Nigerian society. It has permeated all facets of life, and every segment of society is involved. In recent times, Nigeria has held the unenviable record of being considered one of the most corrupt countries among those surveyed¹. The Political Bureau, set up under the Ibrahim Babangida regime, summed up the magnitude of corruption in Nigeria as follows:

It [corruption] pervades all strata of the society. From the highest level of the political and business elites to the ordinary person in the village. Its multifarious manifestations include the inflation of government contracts in return for kickbacks; fraud and falsification of accounts in the public service; examination

* Senior Lecturer, and Ag. Head, Department of Commercial and Property Law, Anambra State University, Igbariam, Nigeria

1. See TRANSPARENCY INTERNATIONAL, TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTIONS INDEX (1996 – 2005), http://www.transparency.org/policy_research/surveys_indices/cpi. Nigeria, however, recorded some improvement in the 2006 Corruption Perception Index. TRANSPARENCY INTERNATIONAL, TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTIONS INDEX 2006, 7 (2006), available at http://www.transparency.org/content/download/10825/92857/version/1/file/CPI_2006_presskit_eng.pdf.

malpractices in our educational institutions including universities; the taking of bribes and perversion of justice among the police, the Judiciary and other organs for administering justice; and various heinous crimes against the state in business and industrial sectors of our economy, in collusion with multinational companies such as over-invoicing of goods, foreign exchange swindling, hoarding and smuggling. At the village level, corruption manifests itself in such forms as adulteration of market goods or denting of measures to reduce their contents with a view to giving advantage to the seller.²

Other manifestations of corruption in Nigeria today include the buying of votes, election rigging and malpractices, the use of money to sway the national and state assemblies, and political donations by private corporations.

President Olusegun Obasanjo, upon coming to power for a second time on May 31, 1999, promised that fighting corruption would be one of the policy thrusts of his administration. Accordingly, the first bill he forwarded to the National Assembly was the Corrupt Practices and Other Related Offenses bill, which became the Corrupt Practices and Other Related Offenses Act of 2000 (hereinafter the "Act").³ The provisions of the Act set up the Independent Corrupt Practices and Other Related Offenses Commission (hereinafter the "ICPC").⁴ Subsequently, the Legislature enacted the Economic and Financial Crimes Commission Act of 2004 which, in turn, established the Economic and Financial Crimes Commission.⁵ President Obasanjo established, among other initiatives throughout the Presidency, a policy and programmes monitoring unit⁶ and a Due Process Office.⁷ This paper seeks to critically examine the legal and institutional framework for combating corruption that existed before Nigeria's nascent democracy, and the anti-corruption mechanisms and measures put in place by the Obasanjo regime. The effectiveness of

2. DIRECTORATE FOR SOCIAL MOBILISATION, REPORT OF THE POLITICAL BUREAU at 212-219 (1987).

3. Corrupt Practices and other Related Offenses Act, (2000) No. 5 (Nigeria). Nigerian statutes, including the Corrupt Practices and other Related Offenses Act, are available at, <http://www.nigeria-law.org>.

4. *Id.* § 3(1).

5. Economic and Financial Crimes Commission (Establishment) Act, (2004) § 1 (Nigeria) available at, www.efcc.nig.org.

6. See "Nigeria: From Pond of Corruption to Island of Integrity" being the text of a lecture delivered by President Obasanjo at the 10th Anniversary Celebration of Transparency International, Berlin, Nov 7, 2003; the Guardian, Thur Nov 13, 2003 p. 8.

7. See The ABC of the Contract Due Process Policy available at, www.bmpiu.gov.ng.

the laws and the institutions and their limitations will be considered. Lastly, the political will to fight corruption will also be examined.

II. THE MEANING OF CORRUPTION

Corruption is a word with so many facets and ramifications that it cannot be easily defined. The World Bank has defined corruption as “the abuse of public office for private gain.”⁸ According to the World Bank, a public office is abused for private gain when an official accepts, solicits, or extorts a bribe.⁹ Further, abuse of a public office occurs when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit.¹⁰ Even if no bribery occurs, public office can be abused for personal benefit as well, through patronage and nepotism, the theft of state assets, and the diversion of state revenue.¹¹ These definitions are deficient, however, in that they are concerned only with public sector corruption, thereby ignoring corruption in the private sector.

Additionally, Transparency International (hereinafter “TI”) has defined corruption as “the misuse of entrusted power for private benefit.”¹² This definition appears to be as deficient as the World Bank’s definition. “Entrusted power” suggests power within a public office, however, in some cases it may also arise in private matters. Furthermore, corruption may involve an exercise of power neither expressly nor implicitly granted.

In the Nigerian case of *Biobaku v. Police*,¹³ Bairamian, J. defined corruption as the receiving or offering of some benefit as a reward or inducement to sway or deflect the receiver from the honest and impartial discharge of his duties. However, this definition appears to define bribery more so than corruption because corruption is a wider concept that encompasses bribery. In effect, corruption may occur without the element of receiving or offering some benefit as a reward or inducement

8. THE WORLD BANK, HELPING COUNTRIES COMBAT CORRUPTION: THE ROLE OF THE WORLD BANK 8-9 (1997), available at <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/corruptn.pdf>. See also PROBLEMS OF CORRUPTION IN NIGERIA 4 – 5 (Ignatius Anyua et al. eds., Lagos: Nigerian Institute of Advanced Legal Studies, 2002) (quoting the World Bank definition).

9. THE WORLD BANK, HELPING COUNTRIES COMBAT CORRUPTION: THE ROLE OF THE WORLD BANK 8-9 (1997).

10. *Id.*

11. *Id.*

12. JEREMY POPE, TI SOURCE BOOK 2000: CONFRONTING CORRUPTION: THE ELEMENTS OF A NATIONAL INTEGRITY SYSTEM 13 (2000), available at <http://www.transparency.org/content/download/2439/14493/file/sourcebook.pdf.zip>.

13. *Biobaku v. Police* [1951] 20 N.L.R. 30 (Nigeria).

to sway or deflect the receiver from the honest and impartial discharge of his duties.

Assisi Asobie, a renowned professor of political science at the University of Nigeria, defined corruption as “unethical behaviour or practice.”¹⁴ According to Professor Asobie, corrupt activity is that which violates the ethics of society in general, or the ethics of one’s office, position, profession, or calling, where ethics means a system of morals, the rules governing behavior, or standards of conduct.¹⁵ This definition is so wide that it defeats its own meaning¹⁶ and may result in confusion of thought and analysis. In legal parlance, corruption normally means conduct prohibited by law. Going by Asobie’s definition, there may be some unethical conducts which, though not illegal, nevertheless qualify as corruption. There may also be unethical conduct that does not amount to corruption. For example, it is unethical for a person to slap his father, yet this does not amount to corruption, strictly speaking.

Lateef Adegbite also adopts the moralist approach in defining corruption. He defined corruption as “moral deterioration, depravity and perversion of integrity by bribery or favour.”¹⁷ He said that corruption in its widest sense “connotes the perversion of anything from its original state of purity, a kind of infection or infected condition.”¹⁸ According to Adegbite, corruption in its most basic sense means acting or inducing an act with the intent of improperly securing an advantage.¹⁹ This definition suffers from the same defects as that of Professor Asobie. In legal parlance, an act or omission which constitutes corruption must be prohibited by law at the pain of punishment. Furthermore, a person involved in corruption may seek to secure an improper advantage for another person rather than himself.

Unfortunately, the Nigerian Criminal Code, the Penal Code, and the Corrupt Practices and Other Related Offenses Act of 2000 do not provide a sufficient definition of corruption. For instance, Section 2 of the Act provides that “corruption” includes “bribery, fraud, and other related

14. Professor Assisi Asobie, Remarks at the Transparency International Workshop in Abuja, Nigeria: Corruption in Campaign Financing and Party Funding p. 3 (August 2000).

15. *Id.*

16. It must be stated, however, that Professor Asobie recognized that his definition is a broad one.; *See Id.* at 6.

17. Lateef Adegbite, *Towards the Evolution of a Corrupt Free Society: The Role and Duties of the Citizenry*, in PERSPECTIVE ON CORRUPTION AND OTHER ECONOMIC CRIMES IN NIGERIA (Bola Ajibola et al. eds., 1991).

18. *Id.*

19. *Id.*

offenses.”²⁰ In the light of the shortcomings of the definitions of corruption highlighted above, I define corruption as an abuse of position or inducement of an abuse of position for an undeserved benefit, advantage or relief. Corruption, in the context of this work, includes all forms of economic crimes.

III. THE PRE-EXISTING LEGAL MECHANISM FOR COMBATING CORRUPTION IN NIGERIA PRIOR TO THE CORRUPT PRACTICES AND OTHER RELATED OFFENSES ACT 2000

Both the Nigerian Criminal Code and the Penal Code, which are comprehensive sets of criminal laws that apply in Southern and Northern Nigeria, contain provisions aimed at tackling corruption in the public sector. The two Codes prohibit both the demand for and the receipt of bribes by public officers,²¹ as well as the giving and offering of bribes to public officers.²² However, the provisions of the Criminal Code on corruption are so technical and complicated, that otherwise guilty persons normally escape punishment.²³ The provisions on corruption in the Penal Code are more lucid and less technical. Of course, at the time these Codes were enacted, corruption had not become as large in scope as it has today.

Both the Criminal and Penal Codes contain glaring inadequacies. First, they do not address corruption in the private sector. Second, there is the likelihood that charges will be brought under the wrong Section of the law. This may lead to a strong possibility of unmerited acquittals because the Criminal Code failed to simplify the offense of corruption.²⁴ Finally, both codes fail to widen the scope of the offense.²⁵

20. Corrupt Practices and other Related Offenses Act, (2000) No. 5, § 2 (Nigeria).

21. Criminal Code Act, (1990) Cap. 77, §§ 98, 99, 101 - 103; Penal Code (Northern States) Federal Provisions Act, (1990) Cap. 345, §§ 115-122 (Nigeria).

22. Criminal Code Act, (1990) Cap. 77, §§ 98; Penal Code (Northern States) Federal Provisions Act, (1990) Cap. 345, §§ 115-122 (Nigeria).

23. The Court observed in *Amechi v. Comm'r of Police* [1958] N.R.N.L.R. 123, 126 (Nigeria) that the law relating to official corruption and kindred offenses is not easy and that the advice of law officers should be sought whenever possible before proceedings are taken. For instance, in *Rex v. Anyaleme* [1943] 9 W.A.C.A. 23 (Nigeria), a police constable was induced by a bribe of five pounds not to prosecute an offender for forgery. It was held that the accused was wrongly convicted under Section 98 of the Criminal Code. The appropriate Section should have been Section 116(2).

24. *Id.*

25. See the observations of Professor Taiwo Osipitan and Oyelowo Oyewo to this effect in their paper “Structuring Measures Against Corruption for Sustainable Development” presented at the

In their application, the two Codes were grossly inadequate in dealing with cases of corruption as corruption increased throughout the country.²⁶ Accordingly, many of the military regimes, which sought to justify their intervention into governance on the need to cleanse the nation of corrupt practices, enacted various military decrees on the subject of corruption offenses.²⁷ The ad hoc measures adopted by the various military regimes to combat corruption did not normally outlive the particular regime that adopted the measure. For instance, the two regimes that demonstrated their genuine intention to combat corruption – the Murtala Mohammed and the Buhari/Idiagbon regimes – were so short-lived that the measures put in place by them did not take root.²⁸

IV. THE CONSTITUTIONAL MECHANISM

The Constitution has a number of provisions which seek to eradicate or reduce corruption. Such provisions include the provision under the fundamental objectives and directive principles of state policy; the provision for separation of powers and checks and balances; the provision for audit of public accounts; and the provision for the code of conduct.²⁹

A. THE FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY

Section 15(5) of the 1999 Constitution under the fundamental objectives and directive principles of state policy requires the state to abolish corrupt practices and abuse of power.³⁰ Under Section 13 of the Constitution, all organs of the government are required to conform to and observe the provisions of the chapter on fundamental objectives and directive principles of state policy.³¹ Item 60(a) of the exclusive

Nigerian Association of Law Teachers Conference held at Lagos State University, Ojo, April 23 – 26, 2007 at 11.

26. *Id* at 11-12.

27. See Public Officers (Investigation of Assets) Decree No. 51 (1966), (Nigeria); Investigation of Assets (Public Officers and Other Persons) Decree No. 37 (1968); Investigation of Assets (Public Officers and Other Persons) (Amendment) Decree No. 43 (1968); Corrupt Practices Decree No. 38 (1975); Recovery of Public Property (Special Military Tribunals) Decree No. 3 (1984); Recovery of Public Property (Special Military Tribunals) (Amendment) Decree No. 8 (1984); Recovery of Public Property (Special Military Tribunals) (Amendment No. 2) Decree No. 14 (1984); Recovery of Public Property (Special Military Tribunals) Decree No. 3 (1984). (All are Nigerian legislation.)

28. The regime was overthrown in a coup led by General Ibrahim Babangida on August 27, 1985

29. See CONSTITUTION, Art. 4 – 12, 13 – 24, 85, 172, Fifth Schedule (1999) (Nigeria).

30. CONSTITUTION, Art. 15(5) (1999) (Nigeria).

31. CONSTITUTION, Art. 13 (1999) (Nigeria).

Legislative list empowers the National Assembly to make laws for the establishment and regulation of authorities for the federation, or any part thereof, and to promote and enforce the observance of the fundamental objectives and directive principles contained in the Constitution.³² In *A.G. Ondo State v. A.G. Federation & 35 Ors*,³³ the Ondo State Government challenged the competence of the National Assembly to enact the Corrupt Practices and Other Related Offenses Act No. 5 of 2000. The Supreme Court held that the National Assembly is empowered under item 60(a) of the exclusive legislative list, to create necessary legislation to establish and regulate the ICPC for the federation (a body established to eradicate corrupt practices in consonance with Section 15(5) of the Constitution).³⁴

B. SEPARATION OF POWER AND CHECKS AND BALANCES

The 1999 Constitution of Nigeria is anchored on the principle of separation of power. The doctrine of separation of power is subject to the twin principle of checks and balances. One of the legislative checks on the Executive is the power of investigation conferred on the Legislature by the Constitution. Article 88 of the Constitution confers on the Legislature the power to investigate, among other things, the conduct of any person, authority, ministry or government department charged with the responsibility of executing or administering laws enacted by the National Assembly, or disbursing or administering moneys appropriated or to be appropriated by the National Assembly.³⁵ Under Article 88(2), the purpose of the power conferred by Article 88(1) is to enable the Legislature to:

(a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and

*(b) expose corruption, inefficiency, or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.*³⁶

32. CONSTITUTION, Second Schedule (Exclusive Legislative List), Item 60(a) (1999) (Nigeria).

33. *A.G. Ondo State v. A.G. Federation & 35 Ors*, [2002] 9 N.W.L.R. (pt 772) 222 (Nigeria). Similar decisions were also reached in *Re: Chief Adebisi Olafisoye* [2004] A.F.W.L.R. (pt 198) 1 (Nigeria); *Federal Republic of Nigeria v. Anache* [2004] 14 W.R.N. 1 (Nigeria).

34. *A.G. Ondo State v. A.G. Federation & 35 Ors*, [2002] 9 N.W.L.R. 222 (Nigeria).

35. CONSTITUTION, Art. 88 (1999) (Nigeria).

36. *Id.*

The stark reality, however, is that the Nigerian Legislature is not independent of the Executive.

First, the majority of the state houses of assembly exist only in name, primarily to rubber-stamp Executive acts. In the case of the National Assembly, a combination of factors has made it a lap-dog of the Executive. Adolphus Wabara, the former President of the Senate, was never elected.³⁷ From initial results released by the Independent National Electoral Commission (hereinafter "INEC"), he lost the senatorial election to Elder Dan Imo.³⁸ Events later took on a new twist when news circulated that Adolphus Wabara was the candidate President Olusegun Obasanjo wanted for the office of Senate President based on his past loyalty to the President.³⁹ Suddenly, other results of the same election began to emerge.⁴⁰ One of the subsequent results declared Wabara the winner of the election. Wabara, who had gone to the election tribunal in Umuahia to challenge his defeat, later withdrew the case from the tribunal and left for Abuja, where he obtained an ex-parte order directing INEC to release the certificate of return to the rightful winner of the election.⁴¹ INEC issued a certificate of return to Wabara on June 2, 2003.⁴² On June 3, 2003, he was elected Senate President.⁴³ Naturally, Wabara cowered before the President.⁴⁴

Second, as a result of the undemocratic internal structure of the ruling, the People's Democratic Party (hereinafter "PDP") maintained a policy that if any member of the National Assembly raises a serious voice against the actions of the Executive, he has no chance of being nominated by the party for a second term.⁴⁵ Before the last general elections, the National Chairman of the PDP allegedly circulated a list of National Assembly members who were qualified for nomination based on their past loyalty to the Executive.⁴⁶ Under these circumstances, all the legislators who had sought to assert the independence of the

37. Obong Akpaekong, et al, *Shady Deals*, Newswatch (Nigeria), June 16, 2003 at 20.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. Wabara, for instance, said that the Senate under his presidency would not talk of impeaching the President; See Abiodun Adeniyi, *The Senate Won't Talk Impeachment*, THE GUARDIAN (Nigeria), June 15, 2003 at 11.

45. See John Abba-Ogbodo, *Party Primaries and the Emerging Legislature*, THE GUARDIAN (Nigeria), Mar 4, 2003 at 8.

46. The list was called "unity list"; See also note 45, *supra*.

Legislative arm lost their nominations.⁴⁷ This remains a lesson to the incumbent legislators.

Third, Nigeria is still at the “bread and butter” level of politics. In other words, most people are concerned with subsistence; consequently, the Executive, which controls the purse of the nation, exerts considerable influence. For example, the Executive applies direct monetary inducements to direct the course of proceedings in the Legislature.⁴⁸ In a recent case, Professor Fabian Osuji, a former Minister for Education, revealed that it is common practice for ministries to bribe legislators to get their budgets passed.⁴⁹ The former Minister mobilized a total of ₦55 million from his ministry and the National Universities Commission to bribe some members of the National Assembly, including the former Senate President Adolphus Wabara, to ensure that the education ministry’s vote increased.⁵⁰ President Olusengun Obasanjo, in a national broadcast, announced the dismissal of the Education Minister.⁵¹ While admitting the scam, the Minister said, *inter alia*, “. . . what the Federal Ministry of Education did . . . is common knowledge and practice at all levels of government – Federal, State and Local”⁵² Senator Adolphus Wabara was forced to resign as Senate President.⁵³ The former Senate President, the former Minister of Education, four senators, and a member of the House of Representatives were arraigned before an Abuja High Court for their involvement in the scam.⁵⁴ As demonstrated above, the absence of true separation of powers and checks and balances in Nigeria has rendered legislative oversight of the Executive illusory in matters of corruption.

C. PUBLIC ACCOUNTS AUDIT

One of the measures provided for in the Constitution for monitoring corruption is the auditing process of public accounts. Section 125 of the 1999 Constitution provides as follows:

47. *Id.* At 8-9.

48. *See The Ekwueme Panel’s Report on the Crisis Between the Legislature and the Executive*, VANGUARD (Nigeria), Dec. 22, 2000, at 15. It was found that money actually changed hands in the National Assembly for the purpose of removing the speaker.

49. Alifa Daniel et. al. *We Did It, Stop Denying*, THE GUARDIAN (Nigeria), Apr 12, 2005, at 1-2.

50. *Id.*

51. *Id.*

52. *Id.*

53. Olu Ojewale, *The Road Down The Valley*, NEWSWATCH (Nigeria), Apr. 4, 2005 at 24.

54. Anza Phillips, *Docked for Bribe*, NEWSWATCH (Nigeria) Apr. 25, 2005 at 17.

(1) There shall be an Auditor-General for the federation who shall be appointed in accordance with the provisions of Section 86 of this Constitution.

(2) The public accounts of the federation and of all offices and courts of the federation shall be audited and reported on by the Auditor-General who shall submit his reports to the National Assembly; and for that purpose, the Auditor-General or any person authorized by him in that behalf shall have access to all the books, records, returns and other documents relating to those accounts.

(3) The Auditor-General shall have power to conduct periodic checks of all government statutory corporations, commissions, authorities, agencies, including all persons and bodies established by an Act of the National Assembly.

(4) The Auditor-General shall, within ninety days of receipt of the Accountant-General's financial statement, submit his reports under this Section to each House of the National Assembly and each House shall cause the reports to be considered by a Committee of the House of the National Assembly, responsible for public accounts.

(5) In the exercise of his functions under the Constitution, the Auditor-General shall not be subject to the direction or control of any other authority or person.⁵⁵

The essence of the public account process is to ensure that the expenditure on projects and programs is in accordance with the sums and projects the Legislature has appropriated. According to Rule 91(e)(2),(3) and (4) of the standing rules of the House of Representatives,⁵⁶ when the Auditor-General's Report is laid before the House, the House must refer it to the Public Accounts Committee of the House, who examines the report and makes recommendations to the House.⁵⁷ The House is then

55. See CONSTITUTION, Cap. V, § 125 (1999) (Nigeria) (noting the position of Auditor-General of the State).

56. The Senate and the State Houses of Assembly have similar rules.

57. See the Standing Rules of both Houses of the National Assembly, available at, www.nationalassembly.nigeria.com.

required to consider the report of the Public Accounts Committee.⁵⁸ Similar provisions exist for the states.

Unfortunately, these provisions garner attention more often when they are breached. With respect to the National Assembly, no Auditor-General's Report was received in 1999, 2000 or 2001.⁵⁹ The then Acting Auditor-General of the Federation, Pius Akubueze, and his immediate successor, Joseph Ajiboye, failed to produce the requisite report as well.⁶⁰ When the Senate twice rejected the nomination of Mr. Ajiboye as the substantive Auditor-General of the Federation, his second in command, Vincent Azie, was appointed by President Obasanjo in an acting capacity.

Mr. Azie, as the Acting Auditor-General of the Federation, submitted a report to the National Assembly. From the report, a summary of the amounts misappropriated by the various ministries are as follows:

Ministry	Amount Misappropriated
Co-operation and Integration in Africa	10,453,573,241.81
Power and Steel	4,394,649,602.19
Works and Housing	2,262,877,023.15
Defence	1,785,877,023.15
Education	1,265,272,388.99
Police Affairs	1,209,216,325.05
Information	664,124,321.46
Commerce	640,053,177.72
Health	465,103,959.12

58. *Id.*

59. See Ita James-Evang, *Legal Issues on Public Accounts and Appropriations*, VANGUARD (Nigeria), Aug. 9, 2002 at 27.

60. THE GUARDIAN (Nigeria), Editorial, Feb. 10, 2003 at 16 (considered the issuance of the Auditor-General's Report by Azie as a watershed as it was the first of its kind).

Industry	356,064,369.12
Total	23,860,732,145.20 ⁶¹

The audit report further disclosed that, while the Government recorded estimated expenditure for the 2000 fiscal year audit period as ₦206.4 billion, the actual expenditure incurred for the year stood at ₦404.8 billion.⁶² According to the report, the Government made payments out of five revenue overheads amounting to ₦398.8 million, contrary to the provision of the financial regulations, which stipulates that gross accruals received must, in all cases, be accounted for in full.⁶³ The report also indicted both the National Assembly and the Federal Judiciary.⁶⁴

Immediately after the report was presented, the Federal Government, through the then Minister for Information, Professor Jerry Gana, openly castigated the acting Auditor-General and subsequently removed him from office.⁶⁵ The Federal Government later explained that Mr. Azie was not removed, but that his tenure of acting appointment had lapsed.⁶⁶ Mr. Joseph Ajiboye, who had served as Acting Auditor-General, and whose nomination by the President in 2002 as the substantive Auditor-General was twice rejected by the Senate, was appointed as the Auditor-General of the Federation⁶⁷ and the new Senate confirmed the appointment.

The Public Accounts Committee of the House of Representatives subsequently conducted public hearing sessions in which accounting officers of various government departments questioned in the Auditor-General's report could provide explanations as to the queries.⁶⁸ The Findings of the Public Accounts Committee disclosed grave financial misconducts as those of the Auditor-General. The Committee, in a summary of its findings, said, *inter alia*:

61. *Id.* at 26.

62. *Id.*

63. *Id.*

64. *Id.*

65. THE GUARDIAN (Nigeria), *The Auditor-General's Report: Matters Arising*, Feb. 27, 2003 at 18.

66. See Abiodun Adeleja, *Gani Gives 2-Weeks' Ultimatum Over Azie*, DAILY CHAMPION (Nigeria), Feb. 28, 2003 at 3.

67. See note 65, *supra*, See also *Government and the Auditor-General's Report*, THE GUARDIAN (Nigeria), Feb. 10, 2003 at 16.

68. HOUSE COMM. ON PUB. ACCOUNTS, Summary of Findings and Recommendations on the Examination Conducted on Ministries and Agencies on Auditor-General's Reports on the Accounts of the Federation (1998-2001); Author Unknown, Status Report on Some Parastatals Mid-Session's Report, THE NEWS MAGAZINE (Nigeria), Mar. 21, 2005 at 27.

Although there is a remarkable improvement in the management of public funds from what it used to be prior to 1999, there is still tremendous degree of recklessness and waste, even in the present state of affairs.

*Cases of theft, destruction of records, circumvention of rules, connivance to defraud government by public officials and their collaborators, etc are also still rampant . . .*⁶⁹

D. THE CODE OF CONDUCT FOR PUBLIC OFFICERS UNDER THE CONSTITUTION

The Code of Conduct is one of the mechanisms instituted by the Constitution for identifying corruption among public officers. The Code of Conduct is contained in the 5th schedule to the Constitution.⁷⁰ Under Sections 172 and 209 of the Constitution, persons in both Federal and State public services are required to conform to and observe the Code of Conduct.⁷¹ The Code of Conduct requires a public officer to abstain from putting himself in a position where his personal interests will conflict with his official duties.⁷² The Code of Conduct also prohibits the President, Vice-President, Governors, Deputy Governors, Ministers, Commissioners, and members of the National and State Assemblies and such other public officers as prescribed in law by the National Assembly from maintaining or operating a foreign bank account.⁷³

A public officer is also prohibited from accepting property or benefits of any kind for himself or on behalf of any other person as payment for any commission or omission performed by him in the discharge of his duties.⁷⁴ Under paragraph 6(2) of the Fifth Schedule, “the receipt by a public officer of any gifts or benefits from commercial firms, business enterprises, or persons who have contracts with the government shall be presumed to have been received in contravention [of paragraph 6(1)] unless the contrary is proved.”⁷⁵

69. *Id.* The Senate Committee on Public Accounts made similar findings. See THISDAY (Nigeria), *Senate Report on Public Accounts*, Sept. 7, 2004 at 13.

70. CONSTITUTION, Fifth Schedule (1999) (Nigeria).

71. *Id.* at Art. 172, 209.

72. *Id.* at Fifth Schedule, Part I, ¶ 1.

73. *Id.* at Fifth Schedule, Part I, ¶ 3.

74. *Id.* at Fifth Schedule, Part I, ¶ 6.

75. *Id.* at Fifth Schedule, Part I, ¶6(2).

According to paragraph 7(b), the President or Vice-President, Governor or Deputy Governor, Minister of the Government of the Federation or Commissioner of the Government of a State, or any other public officer who holds the office of a permanent Secretary or head of public corporation, university, or other parastatal or organization, is prohibited from "accepting any benefit of whatever nature from any company, contractor, or businessman, or the nominee or agent of such person."⁷⁶

Paragraph 8 prohibits bribery of public officers.⁷⁷ Paragraph 11(1) requires that every public officer shall, immediately after taking the oath of office, every four years thereafter, and at the end of his term of office, submit to the Code of Conduct Bureau a written declaration of all his (and those of his minor children) properties, assets, and liabilities.⁷⁸ "Any property or assets acquired by a public officer after the asset declaration. . . which is not fairly attributable to his income or gift, or loan approved by [the] Code shall be deemed to have been acquired in breach of [the] Code unless the contrary is proved."⁷⁹ The spirit behind the declaration of assets is for the system to record the material worth of a public officer at the time of taking office, and compare the person's material worth at the time of leaving office.

Under paragraph 3 of the Third Schedule to the Constitution, the Code of Conduct Bureau is to receive the asset declarations, examine them to ensure compliance with the Constitutional requirements, and "retain custody of such declarations and make them available for inspection by any citizen of Nigeria on such terms and conditions as the National Assembly may prescribe."⁸⁰ Unfortunately, the National Assembly has not enacted any law prescribing such terms and conditions. Under these circumstances, the Code of Conduct Bureau has refused to make asset declarations available upon request to Nigerian citizens.⁸¹ This is a serious impediment to the asset declaration mechanism because it is only when they are made available to the citizens that false declarations can be easily reported.

The Code of Conduct prohibits a public officer, except where he is employed on a part-time basis, from engaging or participating in the management or running of any private business, profession, or trade,

76. *Id.* at Fifth Schedule, Part I, ¶ 7(b).

77. *Id.* at Fifth Schedule, Part I, ¶ 8.

78. *Id.* at Fifth Schedule, Part I, ¶ 11(1).

79. *Id.* at Fifth Schedule, Part I, ¶ 11(3).

80. *Id.* at Third Schedule, Part I, ¶ 3(a) – (c).

81. Lemmy Ughegbe, *Why We Can't Publish Public [Sic] Officers' Assets, By Conduct Bureau*, THE GUARDIAN (Nigeria), May 23, 2007 at 7.

except farming.⁸² However, this provision is essentially unenforced. The country's wage policy appears to be fictional, and employees accept it with a tacit understanding that they will pursue other income generating opportunities. For instance, the minimum wage in the public service is about ₦ 6,500.00 per month (approximately \$50.80).

In *Okoye v. Santilli*,⁸³ the Supreme Court held that a public officer is precluded by the Code of Conduct from engaging in any other business, in violation of Section 20(1) of the Code of Conduct Bureau Act.⁸⁴ Accordingly, the Court held that a contract entered into by one of the Defendants while still a public officer is illegal.⁸⁵ The majority of the Supreme Court overruled the earlier case of *Ogbuagu v. Ogbuagu*⁸⁶ in which it was held that only the Code of Conduct Bureau and the Code of Conduct Tribunal could entertain allegations of breach of the Code of Conduct.⁸⁷

However, in *Nwankwo v. Nwankwo*,⁸⁸ the Supreme Court clarified the meaning of engaging in business when it held that the provision of paragraph 2(b) of part 1 of the Fifth Schedule to the 1979 Constitution is not intended to prevent any public officer from acquiring an interest in a business (e.g., a partnership).⁸⁹ However, it did prohibit a public officer from engaging or participating in the management and running of any private business, profession or trade (to hold a managerial or other position in such an undertaking or solely to run the same).⁹⁰ The court further reached the disturbing decision that the Code of Conduct does not create a private right or interest for which a person could claim relief.⁹¹ Its purpose, according to the Court, is to protect public interest, but a private citizen has no *locus standi* to prosecute its contravention or claim

82. Constitution, Fifth Schedule, Part I, ¶ 2 (1999) (Nigeria).

83. *Okoye v. Santilli*, [1994] 4 N.W.L.R. (pt 338) 256, 289 (Nigeria).

84. Code of Conduct Bureau and Tribunal Act, (1990) Cap. 56 § 20(1) (Nigeria). The Act was enacted under the regime of Ibrahim Babangida to energize the Constitutional provision on the Code of Conduct for Public Officers. It is now an existing law within the meaning of Section 315 of the 1999 Constitution of Nigeria.

85. *Okoye v Santilli* (1994) 4 NWLR (Pt 388) 256.

86. *Ogbuagu v. Ogbuagu* [1981] 2 N.C.L.R. 680 (Nigeria).

87. *Id.*

88. *Nwankwo v. Nwankwo*, [1995] 5 N.W.L.R. (pt 394) 153 (Nigeria).

89. *Id.*

90. *Id.*

91. *Id.*

relief as a result thereof.⁹² The earlier case of *Okoye v. Santilli*⁹³ was neither cited to the court, nor did the court refer to it *suo motu*.⁹⁴

A Code of Conduct Bureau is established under the Third Schedule of the Constitution to ensure compliance with and enforcement of the Code of Conduct. Paragraph 15(1) of part 1 of the Fifth Schedule to the Constitution establishes a Code of Conduct Tribunal.⁹⁵ The Tribunal has the power to try cases of alleged infractions of the Code of Conduct and to impose appropriate sanctions once the Tribunal determines a person is guilty.⁹⁶

The Code of Conduct has some advantages over other corruption-fighting mechanisms. First, it has Constitutional authority so the constitutionality of its provisions cannot be challenged. Second, the Officers of the Code of Conduct Bureau or Code of Conduct Tribunal have secured tenures under the Constitution, which may make them independent or impartial.⁹⁷

The Code of Conduct should not be subject to criminal or civil immunity for the President, Vice-President, Governors and Deputy Governors under Section 308 of the Constitution. Unfortunately, an Abuja High Court has interpreted the Code of Conduct to be subject to the Immunity Clause.⁹⁸ The former Governor of Plateau State, Joshua Dariye, was arrested in 2004 by the Metropolitan Police in London for money laundering.⁹⁹ When a charge was filed against him in Nigeria before the Code of Conduct Tribunal, alleging that he had concealed a foreign account, an Abuja Federal High Court held the trial to be unconstitutional because it violated the Immunity Clause.¹⁰⁰

Additionally, the Code of Conduct has been crippled due to inadequate funding and lack of enabling legislation to activate some of the Constitutional provisions. The reason for crippling the Code of Conduct is not far-fetched. Top members of the Executive and the Legislature are

92. *Id.*

93. *Okoye v. Santilli*, [1994] 4 N.W.L.R. (Pt. 338) 256 (Nigeria).

94. *Id.*

95. CONSTITUTION, Fifth Schedule, Part I, ¶ 15(1) (1999) (Nigeria).

96. *See Id.* at Fifth Schedule, Part I, ¶¶ 15 – 18.

97. *See Id.* at Third Schedule, Part I, ¶ 4, Fifth Schedule, Part I, ¶ 16.

98. *Joshua Chibi Dariye v. Code of Conduct Bureau & 2 Ors* Suit No. FHC/ABJ/CS/507/2004 (Unreported Judgment of Adah J of Federal High Court, Abuja delivered on 6 December, 2004 at 1).

99. *See Shola Oshunkeye and Olukorede Yishau, There 'Immuned' Excellencies*, TELL (Nigeria), Dec. 20, 2004 at 22-23. *See also Wilson Uwujaren and Akin Orimolade, How Dariye Had His Day*, TELL (Nigeria), Nov. 29, 2004 at 34.

100. THE GUARDIAN (Nigeria), Dec. 2, 2004, at 1.

known violators of the Code of Conduct. For instance, while the Code prohibits the President, Vice-President and some other categories of public officers from receiving gifts and donations from individuals or corporations who are currently executing government contracts, President Obasanjo and Vice President Atiku Abubakar received the following donations towards their campaign for a second term:

S/N SOURCE	AMOUNT (₦)
Friends of Atiku	1 billion
Aliko Dangote	250 million
Emeka Offor	200 million
21 PDP Governors	210 million
Group from Europe	1 million
Rivers friends of Obasanjo/Atiku	150 million
Grand Alliance	Boeing 727; two luxury buses
Construction companies in the country	200 million
Dr. Sampson Uche	50 million
PDP caucus in Senate	12 million
Principal Officers of the presidency	10.6 million
AVM Shekeri	10 million
First Atlantic Bank	10 million
Ministers	10 million
Otunba Fasawe	6.5 million
50 Government parastatals	5 million
PDP National Working Committee	5 million

Dr. Ngozi Anyaegbunam	500,000
Dr. Gamaliel Onosode	100,000
Corporate Nigeria (Ltd. By Guarantee)	2 billion ¹⁰¹

These donations were in clear violation of paragraph 7(b) of the Code of Conduct. It is unfortunate that the Supreme Court held that these donations do not amount to the standard of a corrupt practice. In *Yusuf v. Obasanjo*¹⁰² (though in obiter), the Court effectively held that political donations to President Obasanjo do not constitute undue influence, nor do they connote a corruptible act. If the rule of law was strictly observed in Nigeria, President Obasanjo would have been charged before the Code of Conduct Tribunal for violating the Code of Conduct for Public Officers.

Members of the Legislature also violate the provisions of the Code of Conduct with impunity. A recent letter from the Code of Conduct Bureau indicated that more than six months after they assumed office, 29 Senators and 48 members of the House of Representatives have yet to declare their assets.¹⁰³ Yet Section 52 of the Constitution requires every Senator or Member of the House of Representatives to declare his assets before taking his seat.¹⁰⁴ One cannot understand why the Code of Conduct Bureau chose to bring the matter before the clerk of the National Assembly, rather than the Code of Conduct Tribunal, as prescribed by the Constitution.

V. THE CORRUPT PRACTICES AND OTHER RELATED OFFENSES ACT 2000 REGIME

Upon coming to power as a civilian President, the first bill General Obasanjo forwarded to the National Assembly was the Corrupt Practices and Other Related Offenses Bill, which became the Corrupt Practices and Other Related Offenses Act of 2000.¹⁰⁵ The Act, however, did not repeal the existing corruption laws. Rather, it recognized the power of

101. Ehichioya Ezomon & Fred Okoror, *Campaign Finance: Donations or Buying Up the Democratic Process*, THE GUARDIAN (Nigeria), Jan. 24, 2003, at 23.

102. *Yusuf v. Obasanjo*, [2003] 16 N.W.L.R. (pt. 847) 554, 641-642 (Nigeria).

103. Alifa Daniel & Azimazi Momoh Jimoh, *28 Senators, 48 Reps Yet to Declare Assets, Says Bureau*, THE GUARDIAN (Nigeria), Dec. 12, 2003, at 64.

104. CONSTITUTION, Art. 52 (1999) (Nigeria).

105. Corrupt Practices and other Related Offenses Act, (2000) No. 5 (Nigeria).

the Independent Corrupt Practices and Related Offenses Commission (“ICPC”), created by the Act, to prosecute persons who violate existing laws on corruption.¹⁰⁶ The following discussion addresses the offenses created by the Act.

A. GRATIFICATION BY AN OFFICIAL

According to Section 8(1) of the Act, it is an offense for any person to ask for, receive, or obtain any property or benefit of any kind for himself or for any other person, or to agree or to attempt to receive or obtain any property or benefit of any kind for himself or for any other person on account of:

a) anything already done or omitted to be done, or for any favour or disfavour already shown to any person by himself in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a Government department, or corporate body or other organisation or institution in which he is serving as an official; or

*b) anything to be afterwards done or omitted to be done or favour or disfavour to be afterwards shown to any person, by himself in the discharge of his official duties or in relation to any such matter as aforesaid. . .*¹⁰⁷

The punishment for this offense of official corruption is seven years imprisonment.¹⁰⁸ Section 8(2) creates the presumption of a corrupt gift against a public officer, which is similar to Section 98 of the Criminal Code.¹⁰⁹ However, while the opening words of Section 98 read “Any public official”, Section 8 employs the phrase “Any person.”¹¹⁰ The intention may be to widen the scope of Section 8 of the Act. In fact, the Supreme Court in *Biobaku v. Police*¹¹¹ found that the purpose of a similar provision under the Criminal Code was to address the receipt or offer of some benefit as a reward or inducement to sway or deflect a person employed in the public service from the honest and impartial discharge of his duties.

106. *Id.* at § 26(2)

107. *Id.* at § 8(1).

108. *Id.*

109. *Id.* at § 8(2); see Criminal Code Act, (1990) Cap. 77, § 98 (Nigeria).

110. *Id.*

111. *Biobaku v. Police*, [1951] 20 N.L.R. 30 (Nigeria).

118 ANNUAL SURVEY OF INT'L & COMP. LAW [Vol. XIV

Section 9 of the Act extends liability to the giver or promisor of a bribe punishable by seven years imprisonment.¹¹² It is an offense, under Section 10 of the Act, for any person to ask for bribes for himself or for any other person on account of something done or to be done or omitted to be done by a public servant in the discharge of his official duties.¹¹³

B. FRAUDULENT ACQUISITION OF PROPERTY

According to Section 12 of the Act:

*[a]ny person who, being employed in the public service, knowingly acquires or holds, directly or indirectly, otherwise than as a member of a registered joint stock company consisting of more than twenty (20) persons, a private interest in any contract, agreement or investment emanating from or connected with the department or office in which he is employed or which is made on account of the public service, is guilty of an offense and shall on conviction be liable to imprisonment for seven (7) years.*¹¹⁴

This provision is aimed at preventing people in official positions from awarding contracts to themselves or to organizations in which they have substantial interest. Moreover, Section 12 is similar to Section 161 of the Criminal Code.¹¹⁵

C. FRAUDULENT RECEIPT OF PROPERTY

Based on Section 13 of the Act, it is an offense for any person to receive anything which has been obtained by means of a felony or misdemeanor, or by means of any act done in a place outside Nigeria, which, if done in Nigeria, would have constituted a felony or misdemeanor, and which is an offense under the laws in force in the place where it was done, provided that the person knows same to be so obtained.¹¹⁶ Section 13 is similar to the first paragraph of Section 427 of the Criminal Code.¹¹⁷

112. Corrupt Practices and other Related Offenses Act, (2000) No. 5, § 9 (Nigeria).

113. *Id.* at § 10.

114. *Id.* at § 12.

115. *Id.*

116. Corrupt Practices and other Related Offenses Act, (2000) No. 5, § 13 (Nigeria).

117. *Id.*

D. MAKING FALSE STATEMENT OR RETURN

Section 16 makes it an offense for any officer in charge of receiving or managing property to knowingly furnish any false statements or returns with respect to any money or property within his possession, control or care.¹¹⁸ Punishment for the offense is seven years imprisonment.¹¹⁹

E. GRATIFICATION BY OR THROUGH AGENTS

Section 17 prescribes a punishment of five years imprisonment for corruptly offering or giving a gift or consideration to an agent as an inducement for doing or omitting to do any act or thing in relation to his principal's business.¹²⁰ The Section also prescribes punishment for an agent who, with intent to deceive his principal, knowingly uses any receipt, account, or document in which his principal is interested and which contains a false, erroneous or defective statement, and which to his knowledge is intended to mislead his principal or any other person.¹²¹

F. BRIBERY OF PUBLIC OFFICER

Section 18 of the Act prohibits and punishes any person from offering, soliciting or aiding a public officer in accepting any gratification as an inducement or reward for the following:

- (a) Voting or abstaining from voting at any meeting of the public body in favour or against any measure, resolution or question submitted to the public body;*
- (b) Performing or abstaining from performing or aiding in procuring, expediting, delaying, hindering or preventing the performance of any official act;*
- (c) Aiding in procuring or preventing the passing of any vote or the granting of any contract, award, recognition or advantage in favour of any person. . .*

118. Corrupt Practices and other Related Offenses Act, (2000) No. 5, § 16 (Nigeria).

119. *Id.*

120. *Id.* at § 17.

121. *Id.*

120 ANNUAL SURVEY OF INT'L & COMP. LAW [Vol. XIV

*(d) shall . . . be guilty of an offense and shall on conviction be liable to five (5) years imprisonment with hard labour.*¹²²

Section 18(a) above is intended to catch members of the Executive, who use financial inducements to dictate the course of proceedings in the Legislature. The Section also applies to legislators who accept such inducements, or members of contract-awarding public bodies who receive inducements to vote in favor of a particular bidder.

G. USING OFFICE FOR GRATIFICATION

Section 19 of the Act provides that:

*Any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer or any other public officer shall be guilty of an offense and shall on conviction be liable to imprisonment for five (5) years without option of fine.*¹²³

This provision covers cases of discretionary abuse in the distribution of public benefits. However, it is only when the abuse is for the advantage of the particular person, his relation, his associate, or any other public officer, that liability under the provision will arise.

H. FORFEITURE OF GRATIFICATION

Section 20 of the Act is a praiseworthy novelty in criminal law of the country relating to corruption. The Section provides as follows:

Without prejudice to any sentence of imprisonment imposed under this Act, a Public Officer or other person found guilty of soliciting, offering or receiving gratification shall forfeit the gratification and pay a fine of not less than five times the sum or value of the gratification which is the subject-matter of the offense where such gratification is capable of being valued or is

122. *Id.* at § 18.

123. *Id.* at § 19.

*of a pecuniary nature, or ten thousand Naira, whichever is the higher.*¹²⁴

I. DUTY TO REPORT BRIBERY TRANSACTIONS

Section 23 is of special significance. Section 23(1) requires any public officer to whom any gratification is given, promised, or offered, to report such transaction to the nearest officer of the ICPC or police officer.¹²⁵ Section 23(2) also provides that “any person from whom any gratification has been solicited or obtained, or from whom an attempt has been made to obtain such gratification shall..., at the earliest opportunity thereafter, report such soliciting or obtaining, or attempt to obtain the gratification” to the nearest Officer of the Commission or a police officer.¹²⁶ Under Section 23(3), “any person who fails, without reasonable excuse, to comply with subsections (1) and (2) [of Section 23] shall be guilty of an offense and shall on conviction be liable to a fine not exceeding ₦ 100,000 or imprisoned for a term not exceeding two years or to both fine and imprisonment.”¹²⁷

J. BRIBERY FOR GIVING ASSISTANCE WITH REGARD TO A CONTRACT

Section 22 catalogues all aspects of corruption in relation to contract awards. Any person who gives money or any other advantage to a public servant and in return is awarded a contract is guilty of an offense punishable by seven years imprisonment.¹²⁸ The same punishment awaits a public servant who, without lawful excuse, solicits or accepts such advantage arising from contract awards.¹²⁹ Inflation of contract prices or over-invoicing is now punishable by seven years imprisonment and a fine of ₦ 1,000,000.¹³⁰

K. CONCEALMENT OF PROPERTY ACQUIRED THROUGH GRATIFICATION

Concealment of any property obtained in contravention of Sections 10, 11, 13, 14, 15, 16, 18, 19 and 20, whether within or outside the country is an offense punishable with five years imprisonment.¹³¹

124. *Id.* at § 20.

125. *Id.* at § 23(1).

126. *Id.* at § 23(2).

127. *Id.* at § 23(3).

128. *Id.* at § 22.

129. *Id.*

130. *Id.*

131. *Id.* at § 24.

L. FORFEITURE OF PROPERTY UPON PROSECUTION FOR AN OFFENSE

Section 47 is significant in preventing unjust enrichment of a person, even when the person has not been convicted, if the prosecution failed to meet the requisite standard of proof (in criminal cases) or for any other reason. The Section provides:

(1) In any prosecution for an offense under [the] Act, the Court shall make an order for the forfeiture of any property which is proved to be the subject-matter of the offense or to have been used in the commission of the offense where

(a) The offense is proved against the accused; or

(b) The offense is not proved against the accused but the court is satisfied:

(i) that the accused is not the true and lawful owner of such property; and

(ii) that no other person is entitled to the property as a purchaser in good faith for valuable consideration.

(2) Where the offense is proved against the accused or the property referred to in subSection (1) has been disposed of, or cannot be traced, the court shall order the accused to pay as a penalty a sum which is equivalent to the amount of the gratification or is, in the opinion of the court, the value of the gratification received by the accused, and any such penalty shall be recoverable as a fine.¹³²

M. INVESTIGATION OF THE PRESIDENT OR GOVERNOR

Section 52 of the Act provides that when allegations of corruption are made against the President, Vice President, Governor or Deputy Governor, an independent counsel appointed by the Chief Justice of the Federation will investigate.¹³³ The independent counsel's report should be forwarded to the National Assembly or the relevant State House of Assembly. While Section 308 of the Constitution confers immunity on

132. *Id.* at § 47.

133. *Id.* at § 52.

these Chief State Executives from civil or criminal process while in office,¹³⁴ the Court of Appeals held in *Fawehinmi v. Bola Tinubu*¹³⁵ that the police have the discretion to decide whether to investigate a State Executive while in office.¹³⁶

N. INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENSES COMMISSION

Section 3 of the Act establishes the ICPC.¹³⁷ The functions of the ICPC are described in Section 6 of the Act as follows:

6. It shall be the duty of the Commission:

(a) where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offense under this Act or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offense and, in appropriate cases, to prosecute the offenders;

(b) to examine the practices, systems and procedures of public bodies and where, in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of them;

(c) to instruct, advise and assist any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimised by such officer, agency or parastatal;

(d) to advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Commission thinks fit to reduce the likelihood or incidence of bribery, corruption, and related offenses;

134. CONSTITUTION, Art. 308 (1999) (Nigeria). The Supreme Court affirmed the position in *IMB Securities PLC v. Tinubu*, [2001] 45 W.R.N. 1, 22 (Nigeria).

135. *Fawehinmi v. Bola Tinubu* [2002] 7 N.W.L.R. 21 (Nigeria).

136. *Id.*

137. Corrupt Practices and other Related Offenses Act, (2000) No. 5, § 3 (Nigeria).

(e) to educate the public on and against bribery, corruption and related offenses; and

(f) to enlist and foster public support in combating corruption.¹³⁸

The ICPC has broad authority to search, seize, investigate, inspect, and examine: persons,¹³⁹ records of financial institutions, shared accounts, and the contents of safe deposit boxes.¹⁴⁰ An officer of the ICPC, when investigating or prosecuting a case of corruption, has all the powers and immunities of a police officer under the Police Act and other laws empowering and protecting the Police and other law enforcement agents.¹⁴¹

The constitutionality of the Act was at issue in *A.G. Ondo State v. A.G. Federation*.¹⁴² The Attorney-General of Ondo State filed an originating summons in the Supreme Court against the Attorney-General of the Federation and joined the Attorney Generals of the other 35 States as co-defendants in the suit. The plaintiff sought, inter alia, a determination of whether the Act was valid and enforceable as law enacted by the National Assembly and applicable in every State of the Federal Republic of Nigeria (including Ondo State).¹⁴³ The plaintiff also sought an order for a permanent injunction, restraining the Attorney-General of Federation from exercising any powers vested in him by the Constitution or any other law respecting criminal offenses created by provisions contained in the Act.¹⁴⁴ The plaintiff contended, inter alia, that the Act deals with matters which are neither in the Exclusive nor Concurrent Legislative list and, therefore, the enactment of the Act was *ultra vires* the Legislative powers of the National Assembly and, consequently, unconstitutional. The National Assembly can only legislate with respect to matters on either the Exclusive or Concurrent Legislative list.¹⁴⁵

The Supreme Court held, in a unanimous decision, that the Act was constitutional.¹⁴⁶ The Court held that since, by virtue of Section 4(2) of the 1999 Constitution, the National Assembly has the power to make laws for the Federation respecting any matter included in the Exclusive

138. *Id.* at §§ 6(a) – (f).

139. *Id.* at §§ 27–41.

140. *Id.* at §§ 37(2) – (3).

141. *Id.* at § 5(1).

142. *A.G. Ondo State v. A.G. Federation*, [2002] 9 N.W.L.R. (pt. 772) 222 (Nigeria).

143. *Id.*

144. *Id.*

145. *Id.* at 286–287.

146. *Id.*

Legislative list, it follows that the National Assembly is empowered to legislate under item 60(a) of the Exclusive Legislative list for the purpose of establishing and regulating the ICPC.¹⁴⁷

Nevertheless, the Supreme Court held some Sections of the Act unconstitutional. The Court held that the power given by Section 35 of the Act to the ICPC to arrest and detain a person indefinitely until the person complies with the summons, violates the provision of Section 35 of the 1999 Constitution, which guarantees the fundamental right to personal liberty.¹⁴⁸ Section 35 of the Constitution provides that a person arrested for a criminal offense, must be charged within a reasonable time or released on bail.¹⁴⁹ Reasonable time is defined as: 24 hours, provided there is a court of competent jurisdiction within a 40 kilometer radius from the place of arrest, and 48 hours, where there is no such court within that radius.¹⁵⁰

The Supreme Court also held Section 26(3) of the Act unconstitutional because it infringes on separation of power principles.¹⁵¹ Section 26(3) prescribes that prosecution of an offense, under the Act, be concluded and judgment delivered within 90 working days of commencing prosecution.¹⁵² According to the Supreme Court, it is a direct interference with the Judiciary for the National Assembly to prescribe when the court should conclude particular matters.¹⁵³ With due respect, this proposition cannot be supported. The Supreme Court said the Section is unconstitutional without citing any provision of the Constitution the Section violates.¹⁵⁴ Section 26(3) of the Act finds support in Section 36(4) of the Constitution, which provides that any person who is charged with a criminal offense should be tried within a reasonable time.¹⁵⁵

The Supreme Court relied upon the case of *Unongo v. Aku*, which must be understood within its context.¹⁵⁶ In that case, the National Assembly enacted the Electoral Act of 1982.¹⁵⁷ Under the Electoral Act, Section

147. *Id.* at 304.

148. *Id.* at 309-310.

149. CONSTITUTION, Art. 35 (1999) (Nigeria).

150. *A.G. Ondo State v. A.G. Federation*, [2002] 9 N.W.L.R. (pt. 772) 222 (Nigeria).

151. *Id.*

152. *Id.*

153. *Id.* at 309-310.

154. *Id.*

155. Corrupt Practices and other Related Offenses Act, (2000) No. 5, § 26(3) (Nigeria); CONSTITUTION, Art. 36(4) (1999) (Nigeria).

156. *Unongo v. Aku*, [1983] 2 S.C.N.L.R. 332 (Supreme Court of Nigeria).

157. *Id.*

129(3) provided that election petition proceedings before a high court had to be completed no later than thirty days from the election.¹⁵⁸ Section 119(4) required that such a petition had to be presented to the competent high court within fourteen days of conducting the election.¹⁵⁹ Under Section 135, a reply to the petition had to be filed by the Respondent no later than six days after the date on which the petition was served on the Respondent.¹⁶⁰ Finally, Section 139(1) required the Registrar of the Court to give at least ten days notice before the day fixed for the trial.¹⁶¹ It was the contention of Chief F.R.A. Williams, arguing for the Appellant, that by applying the above provisions, where an election result becomes known on the very day the election takes place, if all the actions to be taken by the parties to a petition under Sections 119(4) and 135 of the Electoral Act were carried out on the last day allowed in each case, and allowance was made for the mandatory ten days under Section 139 before the hearing of the petition, then the trial court must dispose of the petition on the very day it was fixed for hearing.¹⁶² The Supreme Court rightly held that the provisions of Sections 129(3) and 130(2) by implication ousted the jurisdiction of the court, constituting an infringement of the right to a fair hearing and a breach of the entrenched separation of powers in the Constitution, and consequently were unconstitutional and void.¹⁶³

This case cannot be the authority for a general proposition that the Legislature is not competent to set the time period within which a case must be decided. The Constitution, in Section 294(1), provided that constitutionally-established courts shall deliver judgments no later than ninety days after the conclusion of final addresses.¹⁶⁴ Speedy trial is always an aspect of a fair hearing.¹⁶⁵ The Constitution also empowers the National Assembly and State Houses of Assembly to prescribe the practice and procedure of the various courts in Nigeria.¹⁶⁶ The Unongo decision was only justified because there were inherent contradictions in the provisions of the Electoral Act of 1982 making it impracticable for any court to comply with the limitation period. Speedy trials in corruption cases are essential because witnesses may die or move outside the country, the *res* (subject matter of litigation) may be destroyed, and

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.* at 347.

164. CONSTITUTION, Art. 294(1) (1999) (Nigeria).

165. *See Ariori v. Elemo*, [1983] 1 S.C.N.L.R. 1 (Supreme Court of Nigeria).

166. *See* CONSTITUTION, Art. 236, 248 (1999) (Nigeria).

the government may change resulting in a new policy or change in the law. The menace of corruption in Nigeria is such that the public will want to know the outcome of cases as soon as possible. Furthermore, from the accused's point of view, allegations of corruption carry such a social stigma that an innocent person would want their name cleared as soon as possible.

VI. CRITICAL APPRAISAL OF THE INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENSES ACT 2000 REGIME

Some of the criticisms of the regime created by the Act relate to the Act's provisions, while others relate to enforcement. A renowned Professor of Criminal Law, Cyprian O. Okonkwo,¹⁶⁷ has offered some constructive criticisms of the Act as follows. The Act has no provision for questioning a person who maintains a standard of living above what commensurates with his legitimate income, or, for punishing him if he cannot provide a satisfactory explanation for the additional income.¹⁶⁸ The Act also has no provision for encouraging and protecting whistleblowers.¹⁶⁹ A whistleblower's law is a desideratum for any meaningful fight against corruption.

Professor Okonkwo further observes that the punishments imposed for the various offenses of corruption are far from severe.¹⁷⁰ According to him, corruption is a special malady in Nigeria and calls for very severe punishment.¹⁷¹ The maximum punishment should be life imprisonment.¹⁷² The judge will then be in a position to determine whether to impose the maximum sentence or a number of years depending on whether there are aggravating or mitigating factors in a particular case.¹⁷³ However, the eminent Professor was short of suggesting a minimum sentence.

In addition to the comments by Professor Okonkwo, it is submitted that in the area of enforcement, the Act leaves much to be desired. A survey conducted in 2001 indicated that corruption increased in Nigeria a year

167. Cyprian Okechukwu Okonkwo, *Legal and Institutional Mechanisms Against Corruption in Nigeria*, JUSTICE IN THE JUDICIAL PROCESS at 288–290 (Centus Chima Nweze ed., 2002).

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

after the establishment of the ICPC.¹⁷⁴ While acts of corruption are reported in the media every day, little or nothing is done by the ICPC. Before the last general elections, the ICPC informed Nigerians that it was investigating allegations of corruption against eight incumbent Governors who were aspiring for a second term.¹⁷⁵ Until now, the outcomes of these investigations have not been disclosed. In the meantime, the Governors have been sworn in for a second term and are enjoying immunity under the Constitution.

In 2002, then-Senate President Anyim Pius Anyim, asked the court to order the ICPC to investigate the allegation of corruption he had made against the National Chairman of the ruling People's Democratic Party, Dr. Audu Ogbe.¹⁷⁶ Anyim informed Nigerians that Dr. Audu Ogbe had corruptly demanded the sum of ₦120 million from him.¹⁷⁷ Dr. Ogbe admitted to making the demand but said the money was required to organize a retreat for members of the PDP.¹⁷⁸ This demand amounts to corruption par excellence. A political party should not use public funds to organize retreats for party members. The amount demanded was so large that it was impossible to expect the Senate President to raise the amount from his personal purse. In March 2003, the Chairman of the ICPC, the Hon. Justice Akanbi, informed Nigerians that Dr. Audu Ogbe was under investigation by the Commission.¹⁷⁹ Presently, nothing has been revealed in regards to the outcome of the investigation. Anyim, also made a report to the ICPC that Senator Arthur Nzeribe had defrauded the Senate to the tune of ₦22.8 million.¹⁸⁰ The ICPC did nothing about the report. Senator Mamman Ali revealed on the floor of the Senate that he and some other senators were given ₦3 million each to discontinue the impeachment of President Obasanjo.¹⁸¹ Senator Nzeribe corroborated the story when he declared that he had collected ₦60 million for himself and his supporters for the same purpose.¹⁸² There were also numerous other open confessions of corruption in which the ICPC failed to act, in spite of Section 27(3) of the Act. Section 27(3)

174. See INST. FOR DEV. RESEARCH, NIGERIA GOVERNANCE AND CORRUPTION SURVEY STUDY: OVERALL SUMMARY REPORT 8 (June 2003) (Nigeria), available at, <http://www.accountabilitynigeria.org/reports/nigeria%20overall.pdf>.

175. Abraham Ogbodo, *Governors, Corruption and the Next Election*, THE GUARDIAN (Nigeria), Jan. 19, 2003 at 18.

176. Lemmy Ughegbe, *₦120m Retreat: Anyim Gets Court's Order for Ogbeh's Probe*, VANGUARD (Nigeria), July 10, 2002 at 1.

177. *Id.*

178. *Id.*

179. Gbolahan Gbadamosi, *Anti-graft Panel Probes Ogbeh, Agunloye, Others*, THE GUARDIAN (Nigeria), Mar. 21, 2003 at 1, 4.

180. Shola Oshunkeye, *The Caging of the Speaker*, TELL (Nigeria), Nov. 11, 2002 at 33.

181. Chinenye Nwabueze, *Dirty Linen*, THE WEEK (Nigeria), Nov. 25, 2002 at 19.

182. *Id.*

empowers an officer of the Commission to commence investigation proceedings, when there is reason to suspect the Commission of an offense under the Act. The officer may exercise all the powers of investigation provided by the Act or by any other law.¹⁸³

Contrary to this authority, the ICPC has only taken action against perceived opponents of the President. When the National Assembly attempted to commence impeachment proceedings against President Obasanjo during his first tenure in office, the ICPC went on the war path against the leadership of the National Assembly. In a letter to the President, the former Senate President Anyim said:

*I regret to inform you that it is clear to us now that while we have clear intentions that the ICPC should be used to fight corruption, we did not know that the presidency's intention is to use ICPC to protect its corrupt members on one hand, and to use ICPC to fight real and perceived enemies of Mr. President.*¹⁸⁴

It was against this background that the National Assembly had to pass the ICPC Amendment Act of 2002. Explaining the rationale for the ICPC Amendment Act, the Senate Committee on ICPC said:

Past events have clearly proved that the Executive (sic) intention is to use the ICPC to fight perceived and real enemies through blackmail, harassment and witch hunting. Most worrisome is the situation where the Executive has carefully and methodically weakened all other Agencies of Government like the Auditor-General of the Federation and Code of Conduct Bureau, whose functions are critical to the fight against corruption, so as to use the ICPC to protect its corrupt members and friends. In the case of the Auditor General of the Federation, whose functions are essential to the fight against corruption, this government has conspicuously refused to appoint a substantive Auditor General for over one year, and the Acting Auditor General, Mr. Azie, who ventured to provide an honest and comprehensive report about the financial rot and corruption in the system was shamelessly sacked, abused and removed from office without delay. The Code of Conduct Bureau

183. *Id.*

184. THE GUARDIAN (Nigeria), Dec. 24, 2002 at 1-2.

*has since the inception of this government been systematically paralyzed through lack of release of budgeted funds for the Agency. It is absolutely obvious to every fair minded Nigerian, particularly objective public officers and politicians at all levels of government, that the Obasanjo government has manipulated the ICPC with the active connivance of the Commission to inadvertently (sic) convert the ICPC into a tool to silence, blackmail, threaten, harass, coarse, [sic] whip in line, guarantee loyalty and witch hunt opponents while protecting friends, no matter how corrupt or devious they are.*¹⁸⁵

The following are highlights of the amendments introduced by the ICPC Amendment Act of 2002, as explained by the Senate Committee on ICPC. Appointment of the Chairman of the ICPC is to be made by the Chief Justice of Nigeria (and no longer the President) on the recommendation of the National Judicial Council (NJC), subject to confirmation by the Senate.¹⁸⁶ The Chairman must be a serving (no longer retired) Justice of the Court of Appeals and his conditions of service must be in line with the conditions of service in the Judiciary.¹⁸⁷ The power to appoint the Secretary for the Commission is vested in the Commission.¹⁸⁸ The Commission is required to adopt its own rules of procedure for its business conduct.¹⁸⁹ The power to prosecute offenses under the Act is vested in the Attorney-General of the Federation.¹⁹⁰

Furthermore, a close look at the Amendment Act shows that the powers of the ICPC were diminished in many respects. The significance of the amendments include: the vesting of the power to appoint the Chairman of the Commission on the Chief Justice of Nigeria, and the power to appoint the Secretary by the Commission itself.¹⁹¹ These provisions will enhance the independence of the Commission and restore public confidence in the Commission. One amendment that must be severely criticized is the divesting of power of prosecution from the Commission, and vesting it solely in the Attorney-General. Rather, the Commission

185. Senate Committee on the Judiciary, *Advertorial*, SUNDAY CHAMPION (Nigeria), Mar. 9, 2003 at 38.

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.* at 39; See also <http://www.thisdayonline.com/archive.php>.

191. *Id.*

should be allowed to exercise the power concurrently with the Attorney-General.

On the other hand, some actions of the ICPC which should be commended are the investigation of the former Minister of Labour and Productivity, Husaini Akwanga, and five other persons over their alleged involvement in the \$214 million National Identity Card Scheme scam.¹⁹² President Obasanjo announced the sacking of the Minister during the Commonwealth Heads of Government meeting in Abuja.¹⁹³ The Minister and the two other accused were charged in 2003 but the trial has not yet been concluded.¹⁹⁴ A second noteworthy achievement is the recent arraignment of two Senior Advocates of Nigeria and two others for spending ₦21 million on bribing INEC officials.¹⁹⁵

VII. ARTICLE II: THE ECONOMIC AND FINANCIAL CRIMES COMMISSION

The Economic and Financial Crimes Commission (hereinafter “EFCC”) was established in 2002 pursuant to Act No. 5 of that year.¹⁹⁶ The Act was later repealed and replaced by the Economic and Financial Crimes Commission (Establishment) Act of 2004.¹⁹⁷ Economic and Financial Crimes are defined in Section 46 of the Act to mean non-violent criminal and illicit activity committed with the objective of illegally earning wealth individually, in a group, or in an organized manner, thereby violating existing legislation governing the economic activities of government and its administration.¹⁹⁸ Financial crimes include any form of “fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal [sic], smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods. . . .”¹⁹⁹

192. George Oji & Cletus Akwaya, Corruption: Labour Minister, Akwanga, Sacked, *THISDAY* (Nigeria), Dec. 5, 2003 at 1.

193. *Id.*

194. Fola Adekeye, *Confessions Of Afolabi, Akwanga And Others*, *NEWSWATCH* (Nigeria), Apr. 26, 2004 at 14.

195. Mikail Mumuni, *This Is Our Own Storey*, *TELL* (Nigeria), May 30, 2005 at 24.

196. Economic and Financial Crimes Commission (Establishment) Act, (2002) § 1 (Nigeria).

197. Economic and Financial Crimes Commission (Establishment) Act, (2004) § 1 (Nigeria).

198. *Id.* at § 46.

199. *Id.*

Section 6 of the Act stipulates the functions of the Commission as follows:

- a. the enforcement and the due administration of the provisions of this Act;*
- b. the investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc;*
- c. the co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority;*
- d. the adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crimes related offenses or the properties the value of which corresponds to such proceeds;*
- e. the adoption of measures to eradicate the commission of economic and financial crimes;*
- f. the adoption of measures which includes coordinated preventive and regulatory actions, introduction and maintenance of investigative and control techniques on the prevention of economic and financial related crimes;*
- g. the facilitation of rapid exchange of scientific and technical information and the conduct of joint operations geared towards the eradication of economic and financial crimes;*
- h. the examination and investigation of all reported cases of economic and financial crimes with a view to identifying individuals, corporate bodies or groups involved;*
- i. the determination of the extent of financial loss and such other losses by government, private individuals or organizations;*

j. collaborating with government bodies both within and outside Nigeria carrying on functions wholly or in part analogous with those of the Commission concerning -

i. the identification, determination of the whereabouts and activities of persons suspected of being involved in economic and financial crimes,

ii. the movement of proceeds or properties derived from the commission of economic and financial and other related crimes;

iii. the exchange of personnel or other experts,

iv. the establishment and maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transactions and persons involved,

v. maintaining data, statistics, records and reports on person [sic], organizations, proceeds, properties, documents or other items or assets involved in economic and financial crimes;

vi. undertaking research and similar works with a view to determining the manifestation, extent, magnitude and effects of economic and financial crimes and advising government on appropriate intervention measures for combating same

k. dealing with matters connected with the extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving economic and financial crimes;

l. The collection of all reports relating [to] suspicious financial transactions, analyse and disseminate them to all relevant government agencies;

m. taking charge of, supervising, controlling, coordinating all the responsibilities, functions and activities relating to the current investigation and

prosecution of all offenses connected with or relating to economic and financial crimes;

n. the coordination of all existing, economic and financial crime investigating units in Nigeria;

o. maintaining a liaison with [the] office of the Attorney-General of the Federation, the Nigerian Customs Service, the Immigration and Prison Service Board, the Central Bank of Nigeria, the Nigeria Deposit Insurance Corporation, the National Drug Law Enforcement Agency, all government security and law enforcement agencies and such other financial supervisory institutions involved in the eradication of economic and financial crimes;

p. carrying out and sustaining rigorous public enlightenment campaign[s] against economic and financial crimes within and outside Nigeria and;

*q. carrying out such other activities as are necessary or expedient for the full discharge of all or any of the functions conferred on it under this Act.*²⁰⁰

Within the short period of its existence, the EFCC has recorded tremendous achievements. The Commission, between May 2003 and June 2004, recovered money and assets derived from crime worth over 700 million.²⁰¹ The Commission has arrested and is detaining more than 500 notorious Advance Fee Fraud²⁰² kingpins, most of whom are standing trial.²⁰³ Moreover, the Commission has investigated and prosecuted some high profile cases of corruption, including the case of the former Inspector General of Police, Tafa Balogun, who was convicted.²⁰⁴ The fiery and indefatigable Chairman of the Commission, Nuhu Ribadu, is credited for the achievements of the Commission.²⁰⁵

200. *Id.* at § 6.

201. The Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, Thailand, Apr., 18 – 25, 2005, *Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice*, at 38; see also www.efcc.nigeria.org.

202. The offense is otherwise known as “Obtaining by False Pretence”.

203. See www.efcc.nig.org.

204. *Id.*; See also Bamidele Johnson, *Tafa on Trial*, THE NEWS (Nigeria), Apr. 11, 2005 at 21-22.

205. THE GUARDIAN (Nigeria) selected Ribadu as Man of the year 2007 as a result of his personal commitment to the anti-corruption struggle in Nigeria. See Eluem Emeka Izeze, *Man Of The Year*, THE GUARDIAN (Nigeria), Dec. 20, 2007 at 1, 2. TELL (NIGERIA) Magazine described him as the unusual Crime Fighter. See Olu Ojewale, *The Unusual Crime Fighter*, TELL(NIGERIA),

Nevertheless, it is a well-known secret that the President's approval is required before any top political office holder can be investigated.

VIII. THE ISSUE OF POLITICAL WILL TO FIGHT CORRUPTION IN NIGERIA

No anti-corruption mechanism or strategy will succeed without strong leadership and political will. Political leadership is required to both set an example and to demonstrate that no one is above the law. Unless clear and unambiguous signals of support emanate from the top, those responsible for administering and enforcing crucial aspects of the country's national integrity system may feel inhibited.²⁰⁶ Political will is therefore a critical and paramount starting point to achieve a sustainable and effective anti-corruption strategy. According to the National Anti-Corruption Strategy and Action Plan for Tanzania, political will involves building legitimacy, credibility, and broad-based political support and compliance both in society and within government.²⁰⁷ Political will and leadership, broadly conceived, involves leaders in all walks of life – political leaders, professional groups, the private sector, trade unions, religious institutions, and other civil society groups, etc. However, the Executive, Legislative, and Judicial branches of government are the main focus of the issue of political will.

A. THE EXECUTIVE AND THE POLITICAL WILL TO COMBAT CORRUPTION

General Obasanjo, from the beginning, was never committed to fighting corruption. As noted earlier, when General Mohammed was assassinated in 1976 and General Obasanjo took power, he abrogated the Corrupt Practices Decree No. 38 of 1975 and discontinued General Mohammed's anti-corruption program.²⁰⁸ This action brought an end to the war against corruption initiated by General Mohammed.

Jan. 16, 2006 at 18. *THISDAY* (NIGERIA), Jan. 1, 2007 at 7 also selected him as one of the best persons of the year 2007.

206. See JEREMY POPE, *TI SOURCE BOOK 2000: CONFRONTING CORRUPTION: THE ELEMENTS OF A NATIONAL INTEGRITY SYSTEM* 47 (2000).

207. PRESIDENT'S OFFICE, *THE NATIONAL ANTI-CORRUPTION STRATEGY AND ACTION PLAN FOR TANZANIA* 10 (1999) (Tanzania). available at, http://www.ipocafrika.org/pdfuploads/the%20united%20republic%20anti-corruption%20of%20tanzania%20the%20nati_003.pdf.

208. The Decree was repealed by the Constitution of the Federal Republic of Nigerian (Certain Consequential Repeals, etc.) Decree 1979 before Obasanjo handed over to the civilian regime in 1979; See NWABUEZE, B. O. *MILITARY RULE AND CONSTITUTIONALISM* 70 (IBADAN, NIG: SPECTRUM BOOKS, 1992).

On Obasanjo's return to power in 1999 as a civilian President, the story is almost the same, except for some recent actions. In 2000, there was an allegation made on the National Assembly floor that the Federal Executive bribed some members of the National Assembly with the sum of ₦500,000 each, to induce them to vote for the impeachment of the former Speaker of the House of Representatives, Alhaji Umar Ghali Na'Abba.²⁰⁹ Part of the money was physically tendered on the floor of the National Assembly. The panel set up by the ruling PDP to look into the crisis between the Executive and the Legislature, found that "money must have indeed changed hands for the purpose of removing the Speaker."²¹⁰

In 2002, to start off the impeachment move against the Senate President, Anyim Pius Anyim, some Senators alleged on the floor of the Senate that the Executive was distributing ₦3 million per Senator to sway them to vote against the impeachment move.²¹¹

In 1999, President Obasanjo paid ₦11 billion to the construction company Julius Berger, even though the amount was not in the approved budget for that year.²¹² His subsequent explanation of making the payment in order to save jobs was unconvincing. In February 2003, President Obasanjo received over ₦2 billion in cash and other material donations (including an aircraft) from individuals and corporations that had business dealings with the Government, in contravention of paragraph 6(2) of the Code of Conduct contained in part 1 of the Fifth Schedule to the 1999 Constitution.²¹³ Also contravened was Section 221 of the Constitution, which provides that, "No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election."²¹⁴ Some of the donations further violated Section 38(2) of the Companies and Allied Matters Act 1990, which prohibits a registered company from directly or indirectly making a donation or gift of property or funds to a political party or for any political purpose.²¹⁵

209. Ayodele Akinkuotu, *Obasanjo in Trouble*, TELL (Nigeria), Nov. 20, 2000 at 20.

210. VANGUARD (Nigeria), The Ekwueme Panel's Report on the Crisis Between the Legislature and the Executive, Dec. 22, 2000 at 15.

211. Chinenye Nwabueze, *Dirty Linen*, THE WEEK (Nigeria), Nov. 25, 2002 at 19.

212. TELL (Nigeria), Feb. 7, 2000 at 12.

213. Ehichioya Ezomon & Fred Okoror, *Campaign Finance: Donations or Buying Up the Democratic Process*, THE GUARDIAN (Nigeria), Jan. 24, 2003 at 23.

214. CONSTITUTION, Art. 221 (1999) (Nigeria).

215. THE GUARDIAN (Nigeria), Jan. 24, 2003 at 22.; THE WEEK (Nigeria), Apr. 7, 2003 at 10-12.

In President Obasanjo's desperate bid for a second term in office, he threw integrity to the wind and restored himself to power at any cost. In 2001, he doctored the Electoral Act sent to him by the National Assembly for assent. He smuggled a clause into Section 80(1) that said "new political parties can only participate in the general elections after 2003."²¹⁶ His calculation was that the existing political parties were too weak to pose a threat to his ambition. The Act was later repealed when the fraud was discovered and a new one without the clause was enacted.²¹⁷

Immediately before the PDP primaries for the 2003 general elections, President Obasanjo engineered an amendment to the PDP Constitution, which made the field uneven for him and other contestants.²¹⁸ The party introduced Section 18(A)(iv) which provided that "All Ministers, Ambassadors, Special Advisers and Special Assistants to the President and the Vice President and all chairmen of Boards of Federal parastatals who are members of the party" shall become voting participants at the national convention.²¹⁹

The PDP national convention for the selection of the Party's Presidential candidate went to the highest bidder.²²⁰ Delegates were intimidated by the use of serially numbered ballot papers, which made it possible to determine how each delegate voted.²²¹

The election proper that saw the "re-election" of President Obasanjo for a second term in office was a monumental fraud. The Presidential candidate of the National Conscience Party, Chief Gani Fawehinmi, said of the election:

I have never seen the kind of electoral malpractices like the one that took place in Nigeria during the last elections. We have heard of rigging in some smaller scale before, but when it becomes a conscious act of

216. NEWSWATCH (Nigeria), Dec. 24, 2001 at 47-48.

217. *Id.*

218. Jide Ajani, *PDP's Mid-term Convention of Intrigues*, VANGUARD (Nigeria), Dec. 12, 2003 at 17, 22.

219. *Id.*

220. This is however not peculiar to the PDP as it has become a tradition for most of the political parties in Nigeria; See THE GUARDIAN (Nigeria), *The Party Primaries: Matters Arising*, Jan. 17, 2003 at 12; See also Reuben Abati, *The Delegate*, THE GUARDIAN (Nigeria) Jan. 5, 2003 at 12.

221. TRANSITION MONITORING GROUP, "DO THE VOTES COUNT?" FINAL REPORT OF THE 2003 GENERAL ELECTIONS IN NIGERIA, at 71 (2003) (Abuja, Nigeria); See also NEWSWATCH (Nigeria), Jan. 20, 2003 at 28-29.

*governance, dictated by the state, organized by the state, monumental fraud, figures changed, votes allocated and awarded, dubious voting, stuffing of ballot boxes [sic]. They used more than 52 methods in rigging that we have never seen before.*²²²

In the case of *Buhari v. Obasanjo*,²²³ General Muhammed Buhari challenged the validity of the election of General Obasanjo. The Court of Appeal found, inter alia, that the election was manipulated in favor of President Obasanjo in his home state of Ogun. It found that the military and armed police were deployed during the election without justification, that there were instances of violence in all fourteen states where the election results were challenged, and that the Independent National Electoral Commission was neither neutral nor impartial.²²⁴ The Court also observed that notwithstanding that it had ordered the production of the original result before the court on the application of the Petitioner, the Independent National Electoral Commission refused to produce the result before the court.²²⁵ A majority of the court, however, ruled that the proven malpractices and irregularities did not substantially affect the result of the election. Nsofor J.C.A., rendered a dissenting opinion, stating:

*...there was not and could not have been a free and fair presidential election on 19th April, 2003 in the atmosphere of violence, insecurity and intimidation by the agents of the 1st respondent and connived at by the 3rd respondent in the states touched upon.*²²⁶

The 2002 report issued by Vincent Azie, former acting Auditor-General of the Federation, indicted the Federal Government for financial recklessness and misappropriation.²²⁷ He was swiftly removed for exposing corruption.²²⁸ In his place, President Obasanjo appointed Joseph Ajiboye, who had acted as the Auditor-General of the Federation

222. Gani Fawehinmi, *Worse Than A Lucifer*, INSIDER MAGAZINE (Nigeria), Jul. 7, 2003 at 19.

223. *Buhari v. Obasanjo*, [2005] 2 N.W.L.R. (Pt 910) 241 (Nigeria).

224. *Id.*

225. *Id.*

226. *Id.* at 525.

227. NEWSWATCH (Nigeria), Feb. 24, 2003 at 24.

228. Editorial, THE GUARDIAN (Nigeria), Aug. 1, 2002 at 12. The editorial, however, considered it wrong to insist on the federal character principle in the appointment.

for twelve months prior to the appointment of Mr. Azie without producing any reports, contrary to the provisions of the Constitution.²²⁹

The appointment of Mr. Ajiboye was improper for other reasons as well. Section 14(3) of the Constitution states:

*The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few State or from a few ethnic or other sectional groups in that Government or in any of its agencies.*²³⁰

Until recently, General Obasanjo had placed the nation's treasury, accounting and auditing system into the hands of persons from his Yoruba ethnic group, contrary to the letters and the spirit of the Constitution.²³¹ Specifically, the Auditor-General of the Federation, the then-Governor, and the Accountant General were all Yorubian.²³² It is important to remember that Nigeria is a highly ethnic-conscious society, where few people can raise a voice against the wrong doing of fellow tribesmen.

A recent lecture delivered by President Obasanjo at the 10th Anniversary Celebration of Transparency International constitutes another fraud.²³³ The lecture entitled "From Pond of Corruption to Island of Integrity," painted a false and fabricated image of Nigeria on the issue of corruption.²³⁴ In 1999, when President Obasanjo came to power, Nigeria's score on the Corruption Perceptions Index of TI was 1.6.²³⁵ In 2003, after four years of Obasanjo's reign, Nigeria's score stood at 1.4, thus indicating a slide in the scale of integrity.²³⁶ This position was

229. Editorial, THE GUARDIAN (Nigeria), Feb. 10, 2003 at 16 (considered the issuance of the Auditor-General's Report by Azie as a watershed as it was the first of its kind).

230. CONSTITUTION, Art. 14(3) (1999) (Nigeria).

231. *Id.*

232. *Id.*

233. See Lecture delivered by President Obasanjo At The 10th Anniversary Celebration Of Transparency International, Berlin, Nov 7, 2003, published in THE GUARDIAN (Nigeria), Nov. 13, 2003 at 7-8.

234. *Id.*

235. TRANSPARENCY INTERNATIONAL, TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTIONS INDEX (1996), available at, http://www.transparency.org/policy_research/surveys_indices/cpi/previous_cpi__1/1999.

236. TRANSPARENCY INTERNATIONAL, TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTIONS INDEX (2003), available at,

corroborated by a study conducted by the Federal Ministry of Finance, in which 65.3 percent of the respondents indicated that corruption had grown worse under the Obasanjo regime.²³⁷ Where is the island of integrity?

In 2004, a Commission of Inquiry found that the former Governor of Kano State and Minister of Defense, Rabi'u Musa Kwakwaso, misappropriated ₦850 million of state funds.²³⁸ The Minister retained his position until the end of President Obasanjo's tenure.

However, despite his short-comings, President Obasanjo's has also made some bold efforts against corruption, including: firing the former Minister of Education, Professor Fabian Osuji, for bribing members of the National Assembly with ₦55 million.²³⁹ President Obasanjo also brought his weight to bear on the former Senate President, Adolphus Nwabara, and, among other things, forced him to resign over the ₦55 million bribe.²⁴⁰ Also remarkable, is the firing and subsequent conviction of the Inspector General of Police, Tafa Balogun, for embezzling over ₦14 million belonging to the Nigerian Police Force.²⁴¹ The EFCC brought over ninety-two charges against the former Inspector General of Police.²⁴²

Nevertheless, the Chairman of the Arewa Consultative Forum, Chief Sunday Awoniyi observed:

*The fountain head of our corruption is traceable to the spiritual corruption flowing out from Aso Rock . . . When a man is afflicted with spiritual corruption, he corrupts everyone around him. He prefers to bring near himself men who are tainted; men who are filthy and morally depraved . . .*²⁴³

http://www.transparency.org/policy_research/surveys_indices/cpi/2003.

237. INST. FOR DEV. RESEARCH, NIGERIA GOVERNANCE AND CORRUPTION SURVEY STUDY: OVERALL SUMMARY REPORT 8 (June 2003) (Nigeria), available at, <http://www.accountabilitynigeria.org/reports/nigeria%20overall.pdf>.

238. Adamu Abu, *Kano May Take Kwakwaso to EFCC*, THE GUARDIAN (Nigeria), Dec. 2, 2004 at 4.

239. Chris Ajaero, *The EFCC report on Wabara and Osuji*, NEWSWATCH (Nigeria), Apr. 4, 2005 at 15.

240. *Id.*

241. Olu Ojewale, *The Unusual Crime Fighter*, TELL (Nigeria), Jan. 161 2006 at 19.

242. THE GUARDIAN (Nigeria), Apr. 5, 2005 at 1.

243. Azimazi Momoh Jimoh, Awoniyi, Mantu Disagree Over President's Crusade on Graft, THE GUARDIAN (Nigeria), Apr. 11, 2005 at 1-2.

Chief Adetokunbo Kayode, a Senior Advocate of Nigeria, while under investigation for allegations of bribing officials of the Independent Electoral Commission for ₦21 million, was nominated by President Obasanjo for a ministerial position.²⁴⁴ Recently, two writers, Michael Fell and Dino Mahtani, of the London Financial Times reviewed the reform agenda of this administration.²⁴⁵ They acknowledged the current prosecution of big fish (influential members/government officials) by the EFCC. They mentioned former Senate President, Adolphus Wabara, Education Minister, Professor Fabian Osuji and former Inspector General of Police, Mr. Tafa Balogun, saying that the public has welcomed their prosecution.²⁴⁶ This, however, has not deferred them from questioning the efficacy of the anti-corruption campaign:

*Yet many Nigerians see the anti-corruption drive as highly selective, focused on the President's enemies or the politically expendable and doing little to address institutional failings. An anti-corruption commission set up by the President has yet to bring a successful high profile prosecution.*²⁴⁷

Towards the end of President Obasanjo's second term in office, he tried to manipulate the Constitution to extend his tenure from the constitutionally-prescribed two terms to a third term.²⁴⁸ This plot failed when the Senate defeated the bill to amend the Constitution.²⁴⁹

On May 29th, 2007, Umar Yar'adua was sworn in as President of Nigeria. The April 2004 general elections that ushered in his administration were marred by unprecedented electoral fraud and violence.²⁵⁰ Human Rights Watch report on the elections said:

Instead of guaranteeing citizens' basic right to vote freely, Nigerian government electoral officials actively colluded in the fraud and violence that marred the presidential polls in some areas. In other areas, officials closed their eyes to human rights abuses

244. Emmanuel Onwubiko, *EFCC Cuts Charges Against Balogun*, THE GUARDIAN (Nigeria), Apr. 29, 2005 at 1.

245. Kayode Komolafe, *Anti-Corruption War: Beyond Idealism*, THISDAY (Nigeria), June 5, 2005 at 31.

246. *Id.*

247. *Id.*

248. Tabs Agbaegbu and Chris Ajaero, *A Dream Killed*, NEWSWATCH (Nigeria), May 29, 2006 at 15.

249. *Id.*

250. See <http://hrw.org/English/docs/2007/04/24/nigeri/5763.htm>.

*committed by supporters of the ruling party and others.*²⁵¹

President Yar'adua's Attorney General, Michael Aondoakaa, undermined the independence of the anti-corruption agencies (i.e. the ICPC, the EFCC and the Code of Conducts Bureau) by interfering in their prosecutorial powers.²⁵² The Attorney General of the Federation was apparently working for the former Governors who had been arrested, investigated, and charged with corruption.²⁵³ He exposed (portrayed) the concept of the rule of law negatively, in order to protect the former Governors.²⁵⁴ Transparency in Nigeria, Nigeria's national chapter of Transparency International, has said that in Nigeria the rule of law has become a façade for impunity.²⁵⁵ Today, the widely held view is that the anti-corruption battle has been slowed down by the Yar'Adua regime because the involvement of friends and campaign donors.²⁵⁶ Recently, President Yar'Adua approved the action of the Inspector General of Police, who illegally sent the EFCC Chairman (an Assistant Inspector General of Police) to the National Institute for Policy and Strategic Study for further studies, which is a ploy to ease Ribadu out of office.²⁵⁷ The Nobel Laureate, Professor Wole Soyinka, while comparing the tacit removal of Ribadu with the assassination of Benazir Bhutto of Pakistan said:

. . . the precarious socio-political condition into which the Pakistani people have been thrown echoed in both parallel and divergent directions, the blow dealt to the Nigerian nation by the "assassination" of the head of the EFCC.

251. *Id.* (The final report of the Human Rights Watch on the 2007 general elections is entitled "Criminal Politics: Violence, 'Godfathers and Corruption in Nigeria" documents the most important human rights dimensions of the crisis of governance: politicians and other political elites openly encouraging systemic violence; the corruption that fuels and rewards Nigeria's violent brand of politics at the expense of the general populace; and the impunity enjoyed by those responsible for these abuses that deny justice to their victims and constitute a roadblock to reform.); *See also* THE GUARDIAN (Nigeria), *Nigeria's Politics Mired in Corruption and Violence*, Oct. 10, 2007 at 9.

252. Jibrin Abubakar, *Aondoakaa Caged EFCC – Transparency in Nigeria*, DAILY TRUST (Nigeria), Dec. 11, 2007 at 1.

253. Bayo Bernard, *The Aondoakaa Agenda*, SOURCE (Nigeria), Oct. 151 2007 at 16.

254. *See* THISDAY (Nigeria), Jan. 1, 2008 at 7 (considering Michael Aondoakaa, the Attorney General of the Federation as the "Worst Exponent of Rule of Law").

255. Bamidele Johnson & Ayorinde Oluokun, *Time to Face Justice*, THE NEWS (Nigeria), Nov. 24, 2007 at 22.

256. *Id.*

257. Madu Onuorah, *Yaradua Okays Ribadu for Kuru*, THE GUARDIAN (Nigeria), Jan. 3, 2008 at 1.

*... Ribadu had commenced the process of restoring dignity to a people whose nation has become a byword for the most breath-taking scam in high-places, for endemic corruption, contempt for accountability and transparency and the abuse of national resources in the pursuit of personal and party power consolidation.*²⁵⁸

B. THE LEGISLATURE AND THE POLITICAL WILL TO FIGHT CORRUPTION

The legislative branch of government in Nigeria has not shown any political will to fight corruption. Nigerians play what is called prebendal politics.²⁵⁹ In Nigeria, power is personalized. The control of the state and its parastatals is expected to translate to instant wealth. The legislators are not content with their law making function. They want to take part in awarding contracts and running ministries and parastatals where they can make money.

It is an open secret that before passing bills presented by the Executive, particularly money bills, legislative houses across the country ask for and obtain pecuniary rewards.²⁶⁰ Before passing the year 2001 budget, ₦500 million was earmarked for every Senatorial Zone for “constituency projects.” The legislators would participate in selecting contractors for the projects and in the supervision of the execution of the project. The question arises: who will exercise the oversight function with respect to those projects?

The former Minister of the Federal Capital Territory, Mr. El Rufai, told Nigerians that Senators Ibrahim Mantu and Jonathan Zwingina demanded a ₦54 million bribe from him in order to facilitate his clearance by the Senate.²⁶¹ The two Senators are not alone, it has been alleged that most ministers paid for their clearance.²⁶² As mentioned earlier, the former Senate President, Adolphus Wabara, presided over the sharing of a ₦55 million bribe from the former Minister of Education, Professor Fabian Osuji, for influencing the ministry’s vote.²⁶³

258. Yemi Adebawale, *Soyinka, Gani Condemn Ribadu’s Ouster*, THISDAY (Nigeria), Dec. 29, 2007 at 1.

259. RICHARD A. JOSEPH, *DEMOCRACY AND PREBENDAL POLITICS IN NIGERIA* 55 (1987).

260. Salif Atojoko, *The Rape of Nigeria*, NEWSWATCH (Nigeria), Nov. 15, 2004 at 17.

261. Salif Atojoko, *Ministers Who Paid To Be Cleared*, NEWSWATCH (Nigeria), Oct. 6, 2003 at 32.

262. *Id.* at 22-27.

263. Chris Ajaero, *The EFCC Report on Wabara, Osuji*, NEWSWATCH (Nigeria), Apr. 4, 2005 at 15.

It is alleged that the multi-national telecommunications company, MTN, gives free monthly recharge cards worth ₦7,500.00 and ₦10,000.00 to every member of the House of Representatives and every Senator.²⁶⁴

C. THE JUDICIARY AND THE POLITICAL WILL TO FIGHT CORRUPTION

The Supreme Court of Nigeria has made certain pronouncements indicating a strong will to fight corruption. In *A.G. Ondo State v. A.G. Federation*,²⁶⁵ the Supreme Court used judicial activism to sustain the Corrupt Practices and Related Offenses Act 2000 as constitutional. If the Supreme Court had relied on existing judicial authorities and orthodox Constitutional principles, the Act may have been pronounced unconstitutional. The Supreme Court observed in that case:

*...in our own situation, taking the issue of corruption and abuse of power nationally will best serve the interests of all and the general welfare of Nigeria, both nationally and internationally. Corrupt practices have become an overwhelming malaise for Nigeria. It cannot be left totally to individual states.*²⁶⁶

The high courts, however, have been a stumbling block in the fight against corruption through the abuse of their power to grant injunctions. An Abuja High Court on December 31, 2003 restrained the ICPC and the Attorney-General of the Federation from investigating allegations of financial impropriety leveled against the former Speaker of the House of Representatives, Alhaji Ghali Na'Abba, pending the determination of the substantive suit.²⁶⁷ The injunction was granted based on an *ex parte* motion.²⁶⁸

In 2001 the Senate set up the Oyofe Committee to investigate alleged cases of impropriety in the award of contracts by the National Assembly. The Committee in its report indicted the then Senate President Dr. Chuba Okadigbo and Senators Rowland Owie, Gbenga Aluko, Abubakar Girei and Haruna Abubakar for impropriety in the award of contracts. The indicted persons obtained a court injunction restraining the Attorney-

264. A member of the House of Representatives, Hon. Haruna Yerima, made the allegation. See Martins Oloja, *Anti-Graft Crusade: A Road Strewn With Thorns*, THE GUARDIAN (Nigeria), Apr. 10, 2005 at 23.

265. *A.G. Ondo State v. A.G. Federation*, [2002] NWLR (pt. 772) 222 (Nigeria).

266. *Id.* at 404 – 405.

267. Lemmy Ughegbe, *Abuja Court Stops Anti-graft Panel on Na'Abba*, VANGUARD (Nigeria), Nov. 2, 2002, at 3.

268. *Id.*

General of the Federation, the Inspector General of Police, and even the Senate from arresting or initiating criminal proceedings against them.²⁶⁹ The issue reached the point where the Chief Justice of Nigeria had to issue a warning to judges who issued injunctions without due consideration for the tenets of fairness, equity, transparency and responsibility.²⁷⁰ Recently, two senior Advocates of Nigeria, Kayode Adetokunbo and Damian Dodo, were arraigned before an Abuja High Court for offering gratification to some officers of the Independent National Electoral Commission.²⁷¹ On the day of the arraignment, the High Court suo motu discharged them without reasonable grounds.²⁷² Fortunately, the ICPC has appealed against the discharge.²⁷³

The courts in a number of cases render interpretations that protect corrupt practices. For instance, an Abuja High Court dealt a fatal blow to the Code of Conduct mechanism for fighting corruption when it held, without justification, that the Code of Conduct mechanism is subject to the Immunity Clause.²⁷⁴ The pronouncement of the Supreme Court in *Yusuf v. Obasanjo*²⁷⁵ may contribute to the breeding of corruption in Nigerian's electoral process. In the Yusuf case, the appellant had sought to join Corporate Nigeria (Limited by Guarantee) as a party to the election petition for its donation of ₦2 billion to President Obasanjo, contrary to Section 221 of the Constitution.²⁷⁶ The Supreme Court, in refusing the application for joinder, held that the donation is not a corrupt act and does not amount to undue influence.²⁷⁷ The Court should have, at least, pronounced on the illegality and unconstitutionality of the action of Corporate Nigeria in making the political donation when the Constitution expressly prohibits it.

The Supreme Court has also rendered interpretations that will inhibit the anti-corruption drive. The interpretation given to the term *locus standi* by the Supreme Court will obviously inhibit the ability of members of civil society to fight corruption. In *Adesanya v. The President*²⁷⁸ the majority of the Supreme Court held that, despite the enthusiasm of all in ensuring compliance with the Constitution, the right of the individual to

269. THE GUARDIAN (Nigeria), May 13, 2001 at 18.

270. THE GUARDIAN (Nigeria), Nov. 6, 2001 at 1.

271. Mikail Mumuni, *This is Our Own Story*, TELL (Nigeria), May 30, 2005 at 20.

272. *Id.*

273. VANGUARD (Nigeria), June 24, 2005 at 12.

274. Joshua Chidi Dariye v Code of Conduct Bureau & 2 Ors Unreported Suit No. FHC/AB/JS/507/2004 (Judgment delivered on 6th December, 2004).

275. Yusuf v. Obasanjo, [2003] 16 N.W.L.R. (Pt.847) 554 (Nigeria).

276. *Id.*

277. *Id.*

278. Adesanya v. The President [1981] S.C. 112; 2 ALL N.L.R. [Part I] 1 (Nigeria).

engage in such an exercise in court can only arise where circumstances of an oppressive or hostile nature exist, and where the rights of the citizens guaranteed under the law and Constitution are curtailed or invaded or breached by a violation of, or non-compliance with the Constitution.²⁷⁹ Accordingly, the mere fact that an act of the Executive or Legislature is unconstitutional is insufficient for an individual to challenge it in court. An individual must allege an infraction of rights or adverse effect on civil rights and obligations, to challenge the constitutionality of an act.²⁸⁰ The Supreme Court also held in *Nwankwo v. Nwankwo*²⁸¹ that a private person has no *locus standi* to prosecute the contravention of the Code of Conduct.²⁸²

Perhaps, Section 35 on fundamental rights in the 1995 Constitutional draft provides a way to overcome the problem of *locus standi*, it provides:

Every person shall have the right to:

(a) *ensure the eradication of corrupt practices, and abuse of power;*

(b) *protect and preserve public property;*

(c) *fight against misappropriation and squandering of public fund.*²⁸³

Only the makers of the 1999 Constitution can explain why these laudable provisions were not incorporated into the Constitution.

In any case, the African Charter has come to the rescue. Article 13(3) of the African Charter provides as follows: "Every individual shall have the right of access to public property and services in strict equality of all persons before the law."²⁸⁴ In *Abacha v. Fawehinmi*, the Supreme Court held that the individual rights contained in the Articles of the African Charter are justifiable in Nigerian Courts.²⁸⁵ The Charter submits, that where a person has stolen public funds or property, other citizens of

279. *Id.*

280. *Id.*

281. *Nwankwo v. Nwankwo*, [1995] 5 N.W.L.R. (pt.394) 153 (Nigeria).

282. *Id.*

283. See Section 35 of the draft 1995 Constitution of Nigeria. However, this Constitution never came into force.

284. Organization of African Unity, African (Banjul) Charter on Human and Peoples' Rights art. 13(3), June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

285. *Abacha v. Fawehinmi*, [2002] 6 N.W.L.R. (pt 660) 228 (Nigeria).

Nigeria are thereby denied access to these funds or property, and they can therefore bring action for the restitution of the funds or property.

Another decision which has implications for the fight against corruption is *State v. S.A Ilori*,²⁸⁶ in which the Supreme Court held, contrary to the clear provisions of the Constitution, that the exercise of powers and discretion vested in the Attorney-General cannot be questioned in court, even where the Attorney-General has clearly abused his office.²⁸⁷ It is true that this may be the position in England and some other places where the Attorney-General is independent and impartial. However, in the Nigerian situation, the Attorney-General is merely a politician who has no security of tenure. He is normally subject to the whims and caprices of his appointer. The Attorney-General may also abuse his office for his own personal gain. The former Attorney-General of the federation, Kanu Agabi, entered a *nolle prosequi* in the charge brought against former permanent Secretary, Ministry of Defence, Dr. Julius Makanjuola, and four others for allegedly embezzling the sum of ₦420 million.²⁸⁸

IX. CONCLUSION

Corruption is the bane of the Nigerian society. It is a clog in the realization of human rights, including socio-economic rights. It turns law enforcement agents into violators of the law. Corruption is an incentive to violate human rights because it enables violators to escape legal sanctions. It enables the resources and property of the state to be personalized and privatized, thus depriving the people of their fair share of public property and services. Corruption retards development. It debases democracy and turns it into an instrument of enslavement instead of emancipation.

Before Nigerian's nascent 'democracy', there were legal and institutional mechanisms for fighting corruption. However, this legal framework has some obvious defects. The framework focused more on public sector corruption. Furthermore, the provisions are so technical and complex that in many cases persons who ought to have been found guilty were set free. The different ad hoc measures by various regimes were never sustained.

286. *State v. S.A Ilori*, [1983], 1 S.C.N.L.R. 94; 1983 N.C.R. 283 (Nigeria).

287. *Id.*

288. Charles Ozoemena, *N420m Fraud Trial: Obasanjo Queries Attorney-General*, VANGUARD (Nigeria), July 25, 2002 at 1.

The Constitutional measures against corruption, which include the auditing of public accounts by the Auditor-General, and the consideration of same by the public accounts committee of the Legislature has been rendered ineffective as a result of the absence of governmental political will. The Code of Conduct mechanism has also been rendered impotent by the Executive and Judiciary branches. If the Code of Conduct Bureau was given adequate financial resources and was properly operated through legislation, it would stand as a bulwark against corruption.

As a result of the absence of independence in the Legislature, there is no effective legislative oversight of the Executive branch. The Legislature is endowed with pre-appropriation, appropriation, and post-appropriation oversight powers over the Executive. The Legislature should recognize that they owe a duty to the Nigerian people. They are not in office for personal aggrandizement.

The Corrupt Practices and Other Related Offenses Act 2000 is a welcome development intended to cure some of the defects of existing laws on corruption as well as meet the new dimensions of corruption. However, it is imperative that the Act is amended to include living a lifestyle above ones legitimate and known means as an offense. The punishments for corruption offenses in the Act should also be made more severe. The amendment of the Act in 2002 by the Legislature to make the Chairman of the Commission appointable by the Chief Justice of Nigeria will restore public confidence in the Commission when implemented. The Economic and Financial Crimes Commission has done well so far but there is room for improvement.

It would appear that the most important factor in the fight against corruption is political will on the part of the Executive, the Legislature, the Judiciary, and civil society. Political will is presently lacking in all these branches of government because it is difficult to expect political will from people who manipulated their way into power. Therefore, free and fair elections are essential in the fight against corruption.

It is true that President Obasanjo took courageous steps in the fight against corruption, but his greatest setback is legitimacy in his government. This has affected his ability to mobilize the people in the fight. Currently, the entire system is one of corruption fighting corruption. Furthermore, instead of institutionalizing the fight against corruption, President Obasanjo took the matter upon himself and acted in a selective manner.

The Supreme Court unwittingly inhibited the war against corruption through its restrictive interpretation of the doctrine of *locus standi* and the unfettering of the discretion of the Attorney-General. Hopefully the Supreme Court will revisit the decisions if provided the appropriate opportunity. The menace of corruption has become so dire in Nigeria that there should be express Constitutional provisions for the right to eradicate corrupt practices and abuses of power. The reckless grant of injunctions by the High Courts to stop investigation and prosecution of corruption cases must be checked if there is to be a meaningful war against corruption in Nigeria.

President Yar'Adua who came to power through a flawed election slowed down the tempo of the anti-corruption war. The Attorney General of the Federation under Yar'Adua's regime clearly undermined the fight against corruption through his interference in the activities of the anti-corruption agencies.

In the final analysis, the battle against corruption in Nigeria can only succeed when it is institutionalized and when there is demonstrated political will to fight corruption, which is presently lacking.

